
ARNOLD & PORTER LLP

Michael B. Gerrard
Michael.Gerrard@aporter.com
212.715.1190
212.715.1399 Fax
399 Park Avenue
New York, NY 10022-4690

214532

August 12, 2005

Via Overnight Mail

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-001

ENTERED
Office of Proceedings

AUG 15 2005

Part of
Public Record

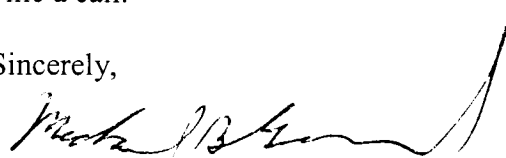
Re: Finance Docket No. 34734
Northeast Interchange Railway LLC - Supplemental Filing of the Village of
Croton-on-Hudson in Support of its Petition to Reject NIR's Notice of Exemption

Dear Secretary Williams:

On behalf of my client, the Village of Croton-on-Hudson, New York (the "Village"), I enclose an original and ten copies of the Village's Supplemental Filing in Support of its Petition to Reject NIR's Notice of Exemption. I also enclose a disk containing a scanned pdf version of the Supplemental Filing together with separate pdf files of the exhibits and a word version of the Supplemental Filing itself.

If you have any questions, please give me a call.

Sincerely,



Michael B. Gerrard

Enclosures

cc: Rick Herbek, Village Manager
James E. Howard, Esq. (via Overnight Mail)

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 34734

**NORTHEAST INTERCHANGE RAILWAY, LLC – LEASE AND OPERATION
EXEMPTION – LINE IN CROTON-ON-HUDSON, NEW YORK**

**SUPPLEMENTARY FILING OF THE VILLAGE OF CROTON-ON-HUDSON IN
SUPPORT OF ITS PETITION TO REJECT NIR's NOTICE OF EXEMPTION**

ENTERED
Office of Proceedings

AUG 15 2005

Part of
Public Record

I. Procedural History

The attempt by Northeast Interchange Railway, LLC ("NIR") to register a waste transfer facility served by an existing spur track as a railroad has already generated a flurry of activity. This proceeding commenced on August 1, 2005 with the filing of a Notice of Exemption (the "Notice"). On August 4, 2004 the Village of Croton-on-Hudson, New York (the "Village") filed a Petition asking for a stay of the Notice (the "Petition"). On the same day NIR filed a supplement to the Notice (the "Supplement"). On August 5, 2005, NIR filed a reply to the Village's petition (the "Reply"), and the Surface Transportation Board (the "Board") granted the stay requested by the Village giving NIR until August 15, 2005 to reply to the Village's petition. NIR then filed a supplemental reply (the "Supplemental Reply") on August 11, 2005. Because the Village has found that the Reply and the Supplemental Reply are false and misleading in many material respects and the Village would like to provide the Board with additional grounds for rejecting the Notice, the Village is making this supplemental filing to the Board.

II. NIR's Replies Compound the Misleading and False Statements in the Notice

In trying to explain away false and misleading information in the Notice, NIR confirms that the vagueness of the Notice was an attempt to gloss over the inherent contradictions in the information provided and makes further false and misleading statements. Thus, the Notice must be rejected as void *ab initio*.

A. Statements Regarding Contempt and Regus Affiliates' Compliance Record Were Misleading

The Reply alleges that the Village "has gratuitously asserted that other unnamed affiliates of Regus Industries, the parent of NIR, allegedly have 'poor operating records'" and "Regus and its affiliates have never been found to be in contempt of any orders of regulatory agencies." Reply at 3. In the affidavit filed with the Supplemental Reply, Mr. Gruson again states that he is unaware of any Regus affiliates being found "in contempt of any orders of state and local agencies." Gruson Affidavit, dated August 10, 2005 ("Gruson Aff.") at 3. These statements are extremely misleading.

The Village has ample documentary basis for its statements. In a letter to another municipality, an attorney representing Regus Industries admitted that Warren Hills LLC was a Regus affiliate and that it had operated the Warren Hills landfill in Ohio from January 2003 to July 2004, accumulating a string of violations. Ex. A. The federal Agency for Toxic Substances and Disease Registry ("ATSDR") declared that landfill to be an urgent threat to public health. Ex. B-1.¹ The Attorney General of Ohio subsequently brought a contempt action against Warren Hills LLC, and its partner Warren Recycling, Inc. on March 11, 2004. Ex. B-4. These Defendants then stipulated to being in contempt and all parties moved the court to make a

¹ For clarity, the numbered Exhibits to Exhibit B are referred to as Exhibit B-__ in this filing.

finding of contempt. Ex. B-5. On November 16, 2004, the court found these Defendants to be in contempt of the court's consent order. Ex. B-6.

Thus NIR's repeated assurances that no Regus affiliates have ever been found to be in contempt of any order of *regulatory agencies* are extremely misleading. Warren Hills LLC, a Regus affiliate, has been found to be in contempt of *a court order*. The truth is therefore worse than the accusation which NIR denied. NIR's attempt to dismiss well documented violations and a finding of contempt against an affiliate of NIR as figments of the Village's imagination conforms with the pattern of lack of candor which NIR has established in this proceeding.

B. Statements Regarding Expansion, Revenue Assumptions, And Environmental Thresholds Are False

The Notice and the Reply are riddled with internal inconsistencies. Although the Village has no way of determining which of the inconsistent statements are false, it is clear that at least some of them must be.

As the Village pointed out in its Petition, NIR is trying to have its cake and eat it when it discussed planned expansion on the one hand and environmental thresholds on the other. Petition at 6-7. In the Reply NIR has added to this confusion by assuming in its revenue projection that "the number of rail cars in the first year or so of operation will be substantially the same as the number of rail cars at the site in prior years." Reply at 4. In the Supplemental Reply NIR further elaborated stating that the volume of waste material being shipped will remain the same as the current level for the foreseeable future. Gruson Aff. at 5.

The existing lessee ("Metro" or "Metro Enviro") is the only shipper on the spur at present. The assumption that the amount of traffic will remain the same is correct only if NIR takes over the operations and the spur continues to serve only the waste processing facility. However, the Notice states that NIR intends to build additional tracks on the leased property to

serve shippers and receivers of containers, lumber, brick, road salt, steel, and bulk liquids.

Notice at 3. If true, NIR's traffic and revenue predictions are false and its failure to take account of the expansion in the environmental analysis is a fatal flaw. NIR is trying to simultaneously maintain two mutually exclusive positions. This is obviously not permissible. Either NIR intends to expand, in which case it should take account of the proposed expansion in its revenue predictions and environmental analysis, or it intends to operate the spur and the waste processing facility in the same way they are operated by the current lessee.

C. Statements Regarding the DEC Permit Are False and Misleading

NIR now states that it "never alleged that the [DEC] license could be transferred without such [DEC's] consent." Reply at 3. The Notice actually stated "The [NYS]DEC permit could be assigned to NIR, if NIR elects to do so." Notice at 3. It made no mention of the need for DEC permission and neither did the Supplement. The statement in the Notice makes it appear that the only condition relevant to assignment of the permit is whether NIR elects to have it assigned. This is highly misleading, because it is by no means clear that the DEC permit would be assigned to NIR, even if NIR so requests. Indeed, the Village has written to DEC opposing any such assignment, because the operations of some entities controlled by Mr. Reger, the owner of NIR have a very poor compliance record. *E.g.* Ex. B. Furthermore, although on August 3, 2005, NIR stated that it intends to transfer the DEC permit to itself, Supplement at 1, DEC confirmed by telephone on August 11, 2005 that no application to transfer the DEC permit to NIR has yet been made. This is particularly surprising because NIR has asked for the Notice to become effective immediately. Supplemental Reply at 1.

Although NIR states that it intends to operate in accordance with the DEC permit, *e.g.* Gruson Aff. at 3, it is clear from the description of its intended waste processing operations, Gruson Aff. at 6 and Supplemental Reply at 4, that it does not understand the terms of that

permit. The DEC permit describes the facility as a “construction and demolition (C&D) debris *processing* facility and Special Condition 5E requires adherence to detailed procedures regarding waste processing that are specified in an Operation and Maintenance (“O & M”) Manual. Ex. C at 1, 4. The Operation and Maintenance Manual states that every load must first be inspected by the site foreman and “it is then unloaded and *processed* to remove recyclables.” Ex. D at 15. Before crushing the procedures also require segregation of unacceptable wastes. *Id.* Thus, once again NIR wants to have it both ways. It states that it will meet the terms of the DEC permit, which requires waste *processing* above and beyond crushing the waste for volume reduction, but its description of its intended operations are not in compliance with the requirements of the permit. NIR has a choice – it must either state that it will process waste in accordance with the DEC permit, or it must admit that it does not intend to meet the terms of the DEC permit. Until NIR makes this choice, the Board should reject the Notice.

D. Certification Regarding the Projected Revenue of NIR Is False

The Reply confirms that NIR provided a sworn certification that its projected revenues are less than \$5 million per year, when the current lessee of the facilities has sworn that it has revenue of over \$9 million. Reply at 3. NIR attempts to explain this discrepancy by stating that the revenue for actually moving rail freight cars will be substantially less than \$5 million. Reply at 4.

This way of projecting the revenue of NIR illustrates the Village’s essential point. The revenue of the current lessee comes entirely from waste processing. At present there are no railroad operations carried out by the lessee. If NIR took over, the railroad operations, if any, could at most consist of moving freight cars down the rail spur a few hundred feet. Thus, railroad revenues would be minimal or zero. However, if the waste processing operations were to be an integral part of NIR’s railroad operation the revenue of NIR’s operation will be closer to

\$9 million, even without the additional revenue from freight car movement, and without movement of the addition materials that NIR seeks to add.

In the Supplemental Reply, NIR makes plain that it now intends not to take title to the waste, but merely to direct it to a disposal point specified by the hauler. As explained elsewhere, NIR could not operate in this way and meet the requirements of the DEC permit. In any event, even if the disposal costs of around \$20 per ton² are subtracted from Metro's current revenues, the residual revenue would still be over \$7 million.³ Thus, because NIR is claiming that the waste processing operation is part of its railroad operations, the certification is false.

Moreover, if only the track operations and not the waste processing operations were included in railroad operations, then the waste processing operations could not be eligible for any sort of federal preemption.

E. NIR Falsely Asserts It Will Meet the Village Zoning Code

NIR claims that its proposed use will be in compliance with Section 230-18B of the Village Zoning code. Gruson Aff. at 4. However, while Section 230-18B permits "railroad lines and stations," Section 230-18E prohibits waste transfer stations, as follows:

Prohibited uses. Solid and liquid waste transfer and storage stations and landfills (including construction and demolition materials) are prohibited. For the purposes of this section, solid and liquid wastes are defined as follows: all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous

² Dennis Patano, the chief operating officer of Regus Industries stated in today's New York Times that "in Ohio we're still beating our heads against each other to get \$18, \$20 a ton [of waste disposed]." Jeff Bailey, *Waste Yes, Want Not*, N.Y. Times, August 12, 2005 at C3.

³ The facility processes around 10,000 tons of waste per month, yielding a revenue of around \$185,000 per week.

material, incinerator ash and residue and construction and demolition debris.

The situation with respect to zoning is somewhat complex and is the subject of ongoing litigation in New York State court. However, no party in the zoning litigation has argued that the current use falls within the “railroad lines and station” permitted use category.

F. Other False and Misleading Statements

NIR states categorically that “the New York Court of Appeals did not technically give the Village the ‘right to close’ the Metro facility.” Reply at 4. This is misleading. On January 27, 2003, the Village Board adopted a resolution ordering the Metro facility to close. Metro successfully petitioned for that order to be annulled at trial, but the Village prevailed at both levels of appeal and the Court of Appeals ultimately dismissed Metro’s petition. Thus, the Court of Appeals has confirmed that the Village had, and continues to have, the right to close the Metro facility. Metro and the land owner recently obtained a temporary restraining order preventing the Village from implementing the closure order, but at oral argument in the current litigation on July 21, 2005, Justice Nicolai stated, “The Court of Appeals has said they can close them [Metro] down.” Ex. E. The attorney representing Metro and the land owner responded “That’s precisely right.” *Id.* Thus, NIR’s assertion regarding the Court of Appeals holding is misleading. Only the landowner’s rights are genuinely at issue, not Metro Enviro’s.

To try to brush off the false address issue, NIR asserts that 1A Croton Pointe Ave. is its operating address. This is false. NIR has no permit to operate the facility at 1A Croton Pointe Avenue. This facility is still being operated by Metro Enviro, which holds DEC and Westchester County permits. Moreover, the Notice refers to its acquisition of the Metro facility as a “proposed transaction.” Thus, if the proposed transaction is complete, the Notice was false and NIR is operating unlawfully, or if it is not, the address provided was false.

III. Transaction Requires More Scrutiny Than The Class Exemption Process Provides

Even if the Notice and Reply were not false and misleading, the Board should reject the Notice because the class exemption process is not an appropriate means of resolving this matter. The Board has previously rejected notice transactions involving transloading operations because they warrant more detailed scrutiny than would be afforded under the agency's class exemption process. *Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc.*, STB Finance Docket No. 33980 (STB served Feb. 15, 2002). The Board explained that “the class exemption procedures were adopted to serve shippers and community interests by facilitating continued rail service on lines that the selling carrier could no longer operate profitably.” *Id.* at 10. Class exemption is not appropriate where the transaction is controversial, private carrier service would be converted to common carrier service, local control of the property involved is a major issue, and substantial factual and legal issues are presented which require detailed scrutiny and the development of a complete record. *Id.* at 10-14.

Even where the Board has not immediately rejected notices involving the alleged transloading of waste materials by start-up carriers, it has granted long term stays of notices where the proposed transactions were controversial. *See New Haven National Rail Terminal Transportation Company, L.L.C.--Lease And Operation Exemption--3.5 Miles Of Track In The Former Cedar Hill Yard, New Haven And North Haven, Ct*, 2005 WL 1396281, STB Finance Docket No. 34690 (STB served June 14, 2005) (notice held in abeyance pending further discussions between interested parties); *LB Railco, Inc. – Lease and Operation Exemption – Providence and Worcester Railway Company*, STB Finance Docket No. 34281 (STB served Nov. 22, 2002) (notice of exemption stayed on Board's own motion to obtain additional information); *New Jersey Rail Carrier, LLC – Acquisition and Operation Exemption – Former*

Columbia Terminals, Kearny, NJ, STB Finance Docket No. 34392 (STB served Aug. 13, 2003) (class exemption stayed to obtain additional information).

Recognizing the inapplicability of the class exemption process to proposals involving transfer of construction waste, in some cases the parties themselves commenced proceedings in a way that allowed more detailed scrutiny of their proposals. *See e.g. Hi Tech Trans, LLC – Petition For Declaratory Order – Newark, NJ*, STB Finance Docket No. 34192 (Sub-No. 1) (STB served Aug. 14, 2003) (filed as a petition for a declaratory order requesting a finding of preemption); *New England Transrail, LLC, d/b/a Wilmington and Woburn Terminal Railroad Company – Construction, Acquisition, and Operation Exemption – In Wilmington and Woburn, MA*, STB Finance Docket No. 34391 (STB served May 3, 2005) (filed as petition for exemption).

Both *Hi Tech* and *New England Transrail* are highly relevant to the Notice because they both involved operations in which construction waste was being loaded on to rail trucks. Ultimately, the Third Circuit resolved the key issue in the *Hi Tech* case, finding that the Board did not have jurisdiction over the waste transloading operations at issue, even though the operator did not process the waste. *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295, 308-09 (3d Cir. 2004). The *New England Transrail* proceeding terminated after the Board dismissed its petition because the applicant did not fully disclose its plans at the environmental review stage and did not keep the Board informed of significant changes. *New England Transrail* at 4-5.

NIR's proposed transaction is even more deserving of close scrutiny than those reviewed concerning *Riverview Trenton Railroad*, *Hi Tech*, and *New England Transrail*. Like *Riverview Trenton Railroad* the motivation behind the transaction is to invoke federal preemption where a decision has been taken by a municipality that the owner or operator wishes to avoid. Like *Hi*

Tech and *New England Transrail* the transaction involves alleged transloading of construction waste. However, unlike either *Hi Tech* or *New England Transrail* the waste processing facility at issue has operated for around 7 years under permits from the State, the County, and the Village.

Around a month ago the New York Court of Appeals ruled that the Village Board “was entitled to conclude that the history of repeated, willful violations created an unacceptable threat of future injury to health or the environment” and that the Village Board’s closure order was valid. Granting an exemption that includes the waste processing facility would therefore undercut the decisions of the Village and the Court of Appeals, New York’s highest court. This confirms that the NIR transaction requires more detailed scrutiny than is possible in the class exemption process and so the Board should reject the Notice.

IV. NIR Cannot Obtain An Exemption

Even if the Notice were not void *ab initio*, if NIR had provided complete information, and if NIR had employed the appropriate process, the Board would still have to reject the Notice for numerous reasons. As discussed in the Village’s Petition, the track at issue is spur track, environmental impact analysis is required, and the waste processing facility would not be subject to the Board’s jurisdiction. In addition, NIR cannot obtain an exemption because NIR would function as a waste processor and shipper and not as a rail carrier.

A rail carrier is “a person providing railroad transportation for compensation.” 49 U.S.C. 10102(5). The facility does not provide railroad transportation, it provides construction waste disposal. The haulers who bring construction waste to the facility for processing do not contract with the landfill to dispose of the waste and with Metro to ship the waste, they contract with Metro to dispose of the waste. Unlike true shippers, the haulers are indifferent to the destination of the waste. They merely seek the most economical means of lawful disposal. That Metro

controls the destination of the waste is shown by the fact that currently all the construction waste from the facility is directed by Metro to one landfill in Ohio. Although NIR states that the haulers would become the shippers if it takes over, such an arrangement would merely be a sham to create the impression NIR would be providing transportation rather than waste disposal services.

Having an arrangement where the haulers specify the place of disposal would also violate the DEC permit. According to the terms of the permit requiring the operator to follow the procedures in the O & M manual (DEC Permit Special Condition 5E, Ex. C at 4), the transfer station operator must reject unacceptable waste, sort the incoming acceptable waste, and direct it to authorized disposal facilities. *See also* DEC Permit Special Condition 23, Ex. C at 6. Until a load is inspected, accepted, and sorted, the destination or destinations of the wastes within it cannot be determined. Thus, the hauler who brings the waste to the processing facility cannot be the shipper, because (s)he cannot determine in advance to which facility the waste will be sent. Furthermore, although NIR states that it intends only to crush the waste, this would also violate the terms of the DEC permit, which requires careful sorting of the waste streams. Thus, NIR would not become a rail carrier if the proposed transaction were completed.

NIR has responded to the village's argument that, even if NIR were a rail carrier, the waste processing facility would not be part of any railroad operations, by trying to distinguish *Hi Tech Trans.* on the basis that the operation at issue in that case was not owned by a railroad. Supplemental Reply at 5. This is a distinction without a difference. If the invocation of federal preemption was merely a question of form rather than substance, many operations like that considered in *Hi Tech Trans.* would surely be acquired by railroads. This would make no overall difference to the amount of rail traffic, but it would deprive municipalities and states of the

ability to regulate these potentially harmful facilities. Furthermore, the Board has a policy of classifying track on the basis of use rather than ownership. It should adopt the same approach to deciding which operations are part of railroad operations and which are not, rather than using a crude ownership test which would create undesirable incentives.

NIR also cites to a Second Circuit case deciding that pure transload facilities may fall within the definition of rail transportation. *Green Mt. R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005). The court stated “[The Railroad] serves industries that rely on trucks to transport goods *from the rail site for processing*; so the proposed transloading and storage facilities are integral to the railroad's operation and are easily encompassed within the Transportation Board's exclusive jurisdiction over ‘rail transportation.’” *Id.* at 644 (emphasis added). Although there is some tension between this Second Circuit holding and the Third Circuit’s holding in *Hi Tech Trans.*, the present case is distinguishable from both of those cases, because NIR is proposing to operate a waste *processing* facility, not to move goods from the rail site for processing. NIR also cites to a recent district court case, but fails to note that the court was only deciding a preliminary injunction motion and not the merits of the case. *Canadian Nat’l Railway Co. v. City of Rockwood*, 2005 WL 1394077 (E.D. Mich. 2005). In addition, in that case the facility was not already in operation and had not been found to be a threat to public health and the environment by the municipality in which it was sited, as upheld by the state’s highest court.

Wider policy implications also point to the same outcome. Many industrial facilities in the United States have rail spurs. Many of these would be sorely tempted to file notices of exemption to become rail carriers if that meant that they could thereby avoid some of the many state and local rules that ensure that their operations are safe, environmentally sound, and compatible with local land uses. This result would be intolerable and would be incompatible

with the Termination Act, which wisely specifically excepted spur track from Board authority, presumably to avoid just such a result. 49 U.S.C. § 10906.

V. NIR Admits The Track Will Not Be A Rail Line

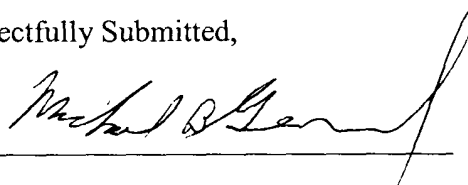
NIR's main contention, that its track will not be spur track, is undercut by its admission that a rail line must serve multiple customers and be operated by a common carrier. Reply at 7. Because NIR has also admitted that the track will have no more rail cars on it than at present, Reply at 4, it follows that it will continue to serve only one existing shipper, the waste processing facility. Furthermore, as discussed above, because NIR must process waste and direct where the waste goes to meet the terms of the DEC permit, it cannot become a mere provider of transportation. This means that NIR would not be operating a rail line. Thus, NIR's attempts to show that it will be subject to the jurisdiction of the Board have in fact confirmed the opposite. NIR will not be a rail carrier in control of a rail line, instead it will be a waste processor that leases spur track over which CSX provides pick up and drop off service for rail cars.

VI. Conclusion

The Board should reject the Notice as void *ab initio* and direct NIR to utilize the petition process if it wishes to reapply for an exemption.

DATED: New York, New York
August 12, 2005

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael B. Gerrard", is written over a horizontal line.

MURPHY, STECICH & POWELL, LLP
Marianne Stecich
828 South Broadway, Suite 300
Tarrytown, New York, 10591
(914) 674-4100

ARNOLD & PORTER LLP
Michael B. Gerrard
Richard Webster
399 Park Avenue
New York, New York 10022-4690
(212) 715-1000

Attorneys for the Village of Croton-on-Hudson

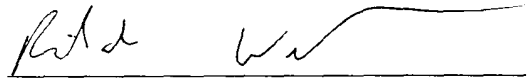
CERTIFICATE OF SERVICE

**SUPPLEMENTARY FILING OF THE VILLAGE OF CROTON-ON-HUDSON IN
SUPPORT OF ITS PETITION TO REJECT NIR's NOTICE OF EXEMPTION**

The undersigned hereby certifies that I caused a copy of the foregoing to be served via
overnight mail on August 12, 2005 to the following:

James E. Howard, Esq.
One Thompson Square
Suite 201
Charlestown, MA 02129

DATED: August 12, 2005

A handwritten signature in black ink, appearing to read 'Richard Webster', is written over a horizontal line.

Richard Webster

EXHIBIT A

DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP

ATTORNEYS AT LAW
1800 MAIN PLACE TOWER
BUFFALO, NEW YORK 14202

716-855-1111

FACSIMILE 716-855-0327
NOT FOR SERVICE OF PAPERS

EMANUEL DUKE
(1916-1999)
EDWIN P. YAEGER
(1934-1992)

* Also Admitted in PA
** Also Admitted in FL

DONALD J. HOLZMAN
GREGORY P. PHOTIADIS
PETER G. RUPPAR
WILLIAM D. SCHULZ
MICHAEL J. LOMBARDO*
HOWARD E. BERGER
DENNIS P. CLEARY
GARY M. KANALEY**
ROBERT L. BENCINI
CHARLES C. RITTER, JR.
GEORGE S. VAN NEST
SHARON ANGELINO
MATTHEW J. BECK

June 29, 2005

VIA FEDERAL EXPRESS

Susan M. Wissink, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

Re: Regus Industries, LLC and Allied Waste Systems, Inc.

Dear Susan:

This letter provides the information requested in Michael B. Gerrard's letter to you dated May 31, 2005 regarding the consent of the Village of Mount Kisco for assignment for the lease for the solid waste transfer station at 10 Lincoln Place from Allied to Regus Industries, LLC.

We wish to clarify that the requested assignment of the lease is from Allied Waste to RS Acquisition Co., LLC, not to Regus Industries, LLC. RS Acquisition Co., LLC is a newly formed New York limited liability company and wholly owned subsidiary of Regus Industries, LLC.

Enclosed is the completed ROC form for the application.

Our responses to questions 1-6 in Mr. Gerrard's letter are set forth below.

Ques. 1. Does RS Acquisition Co., LLC have any parent, affiliate or subsidiary corporations or other entities? If so, please name them.

Response: Parent: Regus Industries, LLC. Other Entities Under Common Ownership: Champion City Recovery, LLC, Boxer Realty Redevelopment, LLC, Sunny Farms Landfill, LLC, Regus of Brooklyn, LLC, SaniServ Waste Services, LLC.

Ques. 2. Is Mr. Andreas Gruson a principal of or otherwise associated with any other companies that are in the waste management business? If so, please name them.

Response: Mr. Andreas Gruson is the CEO of Regus Industries, LLC and its subsidiaries, including RS Acquisition Co., LLC. He is also a principal of SaniServ Industries Inc. which is licensed by the Westchester County Solid Waste Commission, The New York City Business Integrity Commission and the New Jersey Department of Environmental Conservation, but which has no operating assets and is not engaged in any waste management activities.

Ques. 3. From Internet searches, we are aware of a company called Regus Industries, whose principal or chief executive officer is Mr. Gordon Reger. Are Mr. Reger or the other Regus Industries in any way associated with RS Acquisition Co., LLC?

Response: Mr. Gordon Reger is the Chairman of Regus Industries, LLC. Regus Industries, LLC is the parent of RS Acquisition Co., LLC.

Ques. 4. If the answer to Question 3 is yes, please identify any companies in the waste management business with which Mr. Reger is associated.

Response: Regus Industries, LLC

Ques. 5. What other waste management operations (e.g. transfer stations, landfills, incinerators, recycling centers, hauling/carting businesses) are now, or in the past five years have been, operated by RS Acquisition Co., LLC or by any other entity identified in the response to questions 1,2,3, or 4?

Response: Midstate Recovery, LLC (transfer station), Warren Hills, LLC (landfill operator)

Ques. 6. For each of the waste management operations identified in response to question 5, please provide:

- a) Name, location, years of operation, and type of operation(s)
- b) Copies or full descriptions of any notices of violation, civil or criminal complaints or petitions, and governmental or judicial orders or decrees (whether compulsory or on consent), issued or executed on or after January 1, 2000 in connection with any of these waste management operations.

Response:

- a) (i) Midstate Recovery, LLC – Portland, CT, February 2002 to July 2004, transfer station

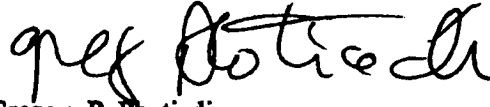
Susan M. Wissink, Esq.
June 29, 2005
Page 3 of 3

- (ii) Warren Hills LLC – Warren, OH, January 2003 to July 2004, landfill operating agreement for Warren Recycling, Inc.
- b)
 - (i) Midstate Recovery, LLC – none.
 - (ii) Warren Hills, LLC – See attached list.

Please let me know if there are any further questions or if any further information is requested and we will be pleased to respond. RS Acquisition Co., LLC and its Parent Regus Industries, LLC look forward to a smooth transition of the operation of the subject transfer station and wish to establish and maintain a positive working relationship with the Village of Mount Kisco.

Very truly yours,

DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP



Gregory P. Photiadis

GPP/bm
Enclosure

WARREN RECYCLING/WARREN HILLS

- 2/20/03 - Notice of Violation - Identified SW intermixed with C&D, no staging area, leachate control, water pollution, solid waste, cliffing, weekly cover, fire control
- 3/13/03 - Notice of Violation - Identified SW intermixed with C&D, no marked staging area, leachate control.
- 3/25/03 - Notice of Violation - Identified SW intermixed with C&D, No marked staging area, leachate collection system move, extinguish landfill fire, 1' head on leachate pond
- 4/23/03 - Notice of Violation - SW on working face, marked staging area, fire control, 1' leachate head
- 5/23/03 - Notice of Violation - Fire control
- 6/6/03 - Notice of Violation - Leachate, Odor
- 6/24/03 - Notice of Violation - MSW in C&D
- 7/1/03 - Consent Order and Permanent Injunction
- 7/16/03 - Notice of Violation - Dust Control at Unloading Areas, Haul Roads and Working Face
- 7/23/03 - Notice of Violation - Fire Control, 1' Leachate Head, Sediment Control Water Pollution
- 7/28/03 - Notice of Violation - MSW in C&D
- 8/11/03 - Notice of Violation - Solid Waste on Working Face, Marked Staging Area
- 8/25/03 - Notice of Violation - Solid Waste, Marked Staging Area, 1' Leachate Head
- 9/12/03 - Notice of Violation - Solid Waste, Marked Staging Area
- 9/16/03 - Notice of Violation - Visual Emissions

- 10/9/03 - Notice of Violation - Exceeding daily acceptance rate, daily cover, solid waste**
- 11/14/03 - Notice of Violation - Solid Waste, Marked staging area**
- 11/28/03 - Notice of Violation - Uncontrolled surface run off**
- 2/13/04 - Notice of Violation - Financial bond closure**
- 3/11/04 - Motion for Contempt**
- 3/16/04 - Notice of Violation - Solid Waste, 1' leachate head, leachate odors, silting in surface water**
- 7/7/04 - Notice of Violation - leachate odors, pretreatment system operation and/or installation thereof**

47-1000 (Rev.)-10a

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RECORD OF COMPLIANCE—Permit Application Supplement

Please read all instructions on reverse side before completing this application—Please TYPE or PRINT clearly

DEPARTMENT USE ONLY DEO APPLICATION NUMBER

1. FULL NAME OF APPLICANT RS Acquisition Co., LLC	
2. MAILING ADDRESS (Principal Place of Business) Street 2730 TRANSIT ROAD	3. NEW YORK STATE MAILING ADDRESS (If different) Street
City/State/Zip Code WEST SENECA, NY 14224	City/State/Zip Code
4. TYPE OF ORGANIZATION ☐ Individual ☐ Partnership ☐ Company ☐ Corporation ☒ Other LLC	5. If other than individual, provide Federal Taxpayer ID Number 20-2456742
6. Does the applicant currently hold any permit issued under the Environmental Conservation Law? ☐ Yes ☒ No	
7. a. Has the applicant been denied a permit or has the applicant had a permit revoked or suspended under the Environmental Conservation Law? or b. Is the applicant currently the subject of an enforcement action under the Environmental Conservation Law? a. ☐ Yes ☒ No b. ☐ Yes ☒ No	
8. If any answer to questions 6, 7(a), or 7(b) is YES, provide details on a separate page and attach it to this form.	
9. Has the applicant, and if the applicant is a corporation, has any officer, director, or large stockholder (owner of 25 percent or more of not publicly-traded stock of the corporation, within the last ten (10) years, been: a. found in an administrative, civil or criminal proceeding to have violated any provision of the Environmental Conservation Law (ECL), any related order or determination of the Commissioner, any regulation promulgated pursuant to the ECL, the condition of any permit issued thereunder, or any similar statute, regulation, order or permit condition of any other state or federal government agency? ☐ Yes ☒ No b. an officer, director or large stockholder (owner of 25% or more of not publicly-traded stock of a corporation which—during the time such person was an officer, director or large stockholder—was determined in an administrative, civil or criminal proceeding to have violated any provision of the Environmental Conservation Law (ECL), any related order or determination of the Commissioner, any regulation promulgated pursuant to the ECL, the condition of any permit issued thereunder, or any similar statute, regulation, order or permit condition of any other state or federal government agency? ☐ Yes ☒ No c. convicted of a criminal offense under the laws of any state or federal government agency, which involves environmental statutes or regulations, or fraud, bribery, perjury, theft, or an offense against public administration as that term is used in Article 175 of the Penal Law, or an offense involving false written statements as those terms are defined in Article 175 of the Penal Law? Out-of-state history may be limited to misdemeanor, felony and civil penalties assessed at \$25,000 or more. ☐ Yes ☒ No d. an officer, director or large stockholder (owner of 25% or more of not publicly-traded stock) of a corporation which—during the time such person was an officer, director or large stockholder—was convicted of a criminal offense under the laws of any state or federal government agency, which involves environmental statutes or regulations or fraud, bribery, perjury, theft, or an offense against public administration as that term is used in Article 175 of the Penal Law, or an offense involving false written statements as those terms are defined in Article 175 of the Penal Law? Out-of-state history may be limited to misdemeanor, felony and civil penalties assessed at \$25,000 or more. ☐ Yes ☒ No	
10. If any answer to questions 9a through 9d is YES, provide details on a separate page and attach it to this form.	
11. Does the applicant currently owe any regulatory fees pursuant to Article 78 of the Environmental Conservation Law to the Department of Environmental Conservation? ☐ Yes, amount \$ ☒ No ☐ Under dispute for years _____ amount \$ _____	
12. CERTIFICATION BY APPLICANT who is an individual I hereby affirm under penalty of perjury that the information provided on this form and attached statements and exhibits is true to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a crime. Date _____ Signature _____ Print Name _____ *2 attached statements and exhibits to this to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a crime pursuant to Section 215.45 of the Penal Law.	
ITEMS 13 THROUGH 16 TO BE COMPLETED BY AN APPLICANT OTHER THAN AN INDIVIDUAL	
13. SPECIFY UNDER WHAT LAW APPLICANT WAS ORGANIZED NEW YORK	14. DATE OF ORGANIZATION NY, MARCH 2005
15. CERTIFICATION BY AN OFFICER OTHER THAN AN INDIVIDUAL I hereby affirm under penalty of perjury that I am _____ (CEO) of _____ (RS Acquisition Co., LLC) and that I am authorized by that entity to make this application and that the information provided on this form and attached statements and exhibits is true to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a crime. Date 6/17/05 Signature Andrew Gauvain Print Name Andrew Gauvain	

EXHIBIT B

July 22, 2005

Via Overnight Mail

Mr. Marc Moran
Regional Director
New York State Department of Environmental Conservation
21 South Putt Corners
New Paltz, NY 12561

Re: Metro Enviro Transfer LLC: DEC Permit Number 3-5522-00119/00002

Dear Mr. Moran:

I am writing on behalf of my client, the Village of Croton-on-Hudson (the "Village"). We have been advised that an affiliate of Regus Industries LLC ("Regus") is seeking to purchase the waste transfer stations in Westchester County owned by Allied Waste Industries, Inc. ("Allied"), including the waste transfer station in the Village (the "Facility").

We have also been advised by Ohio officials that Warren Hills LLC ("Warren Hills"), a Regus affiliate, operated the Warren Hills Landfill (the "Landfill") in Ohio. Conditions at Warren Hills have been the subject of a federal government health investigation, emergency response action, and enforcement proceedings. In addition, the situation has received attention in the press.

Concern about leachate and odor at the Landfill prompted the Agency for Toxic Substances and Disease Registry to investigate the Landfill and declare it an "urgent public health hazard" in late 2003. Exhibit 1. EPA's Emergency Response Branch ("ERB") then initiated a site assessment report, which found very high levels of hydrogen sulfide. Exhibit 2. Most recently, on April 25, 2005, ERB undertook a CERCLA removal action to mitigate the threats to health presented by the Landfill. Exhibit 3.

Enforcement at this Landfill has been an ongoing problem. The Attorney General of Ohio brought a contempt action against Warren Hills and its partner Warren Recycling, Inc. on March 11, 2004. The contempt motion is attached as Exhibit 4. The motion recited that the State of Ohio signed a Consent Order with Warren Hills on July 1,

ARNOLD & PORTER LLP

Marc Moran
July 22, 2005
Page 2

2003, but that beginning on or about August 11, 2003, Warren Hills failed to comply with the Consent Order. The motion highlighted the following violations of the consent order: illegal acceptance of prohibited materials; failure to use an unloading zone prior to placing materials at the working face; failure to properly manage and control leachate; and failure to submit a post-closure care plan by December 28, 2003, as required by the Consent Order.

On November 16, 2004, Warren Hills stipulated that it was in contempt. A copy of that stipulation is attached as Exhibit 5. More recently, on June 20, 2005, the State of Ohio moved for a hearing on contempt penalties because it had been unable to agree on a way for Warren Hills to purge its contempt. That motion is attached as Exhibit 6.

The situation at the Landfill has also received some press attention. Articles from June and September 2004 are attached as Exhibit 7. The September 2004 article confirms Regus' involvement in the operation of the Landfill and states that the Landfill had a major odor problem that was associated with delivery of railcars of pulverized waste. The June 2004 article states that the Landfill closed around June 1, 2004, and that the Landfill was unable to meet its legal and environmental obligations.

The Village has experienced major problems with permit violations at the Facility by the current operator. Warren Hills' record of disregard of court orders and violation of environmental laws shows that Regus' record of compliance may be even worse than that of the current operator. The Village therefore requests that DEC deny any request by any Regus affiliate to transfer the DEC permit for the Facility into its name.

Sincerely,



Michael B. Gerrard

Enclosures

cc: Richard Herbek, Village Manager

EXHIBIT 1



ATSDR MEDIA ANNOUNCEMENT

ATSDR Exposure Investigation Finds Urgent Public Health Hazard From Hydrogen Sulfide in Warren Township, Ohio

For Immediate Release: Dec. 8, 2003

ATLANTA - The Agency for Toxic Substances and Disease Registry (ATSDR), a public health agency of the U.S. Department of Health and Human Services, today released its final public health consultation, an exposure investigation of hydrogen sulfide in the air, for the Warren Township site in Warren, Trumbull County, Ohio.

ATSDR concluded that an urgent public health hazard exists on the basis of the following conditions: _____

- People with pre-existing cardiopulmonary disease or respiratory problems are at risk from the levels of hydrogen sulfide present in outdoor air in residential areas.
- On the basis of the levels of hydrogen sulfide and methane found in landfill vents, ATSDR finds that the potential for fire and explosion under extreme conditions on the landfill presents a threat to community members and workers at the site.
- There is a physical health hazard to children and adults who access the unrestricted landfill.

ATSDR uses the "urgent public health hazard" conclusions for sites where short-term exposures (less than 1 year) to hazardous substances or conditions could result in harmful effects that require rapid intervention. Other conclusions from the Warren exposure investigation include:

- Members of the community cannot easily avoid exposures because hydrogen sulfide was also found inside homes.
- The levels of hydrogen sulfide, and possible other noxious-smelling compounds, in the air are resulting in a diminished quality of life for community members.
- It is possible that workers near the source of hydrogen sulfide might be exposed to levels that exceed occupational exposure guidelines

The ATSDR exposure investigation recommends that steps be taken to eliminate exposure to hydrogen sulfide from outdoor sources. Other recommendations include eliminating gas accumulation on the landfill property, conducting air sampling for other sulfur gases, identifying the source of the hydrogen sulfide and determining if there is a need for a health hazard evaluation of the workers. ATSDR also recommends that local, state and federal agencies consider conducting a

health study of the population.

The document may be reviewed at the following repository:

Warren Trumbull County Public Library
444 Mahoning Avenue N.W.
Warren, Ohio 44483
(330) 399-8807

Community members seeking information on the meeting may contact Regional Representative Michelle Colledge at 312-886-1462, Environmental Health Scientist Gail Scogin or Health Communications Specialist Lorine Spencer toll free at 1-888-422-8737. Refer to the Warren Township site in Warren, Ohio, when calling.

###

Members of the news media can request an interview with ATSDR staff by calling Jennifer Sarginson or Jill Smith in the ATSDR Office of Communication at 404-498-0070.

Back to ATSDR Home page

Updated by R. Searfoss December 9, 2003
For more information, contact ATSDR at:
1-888-422-8737 or e-mail (public inquiries)
404-498-0080 or e-mail: atsdrmediainquires@cdc.gov (news media)

[ATSDR Home](#) | [Search](#) | [Index](#) | [Glossary](#) | [Contact Us](#)
[About ATSDR](#) | [News Archive](#) | [ToxFAQs](#) | [HazDat](#) | [Public Health Assessments](#)
[Privacy Policy](#) | [External Links Disclaimer](#) | [Accessibility](#)
[US Department of Health and Human Services](#)



ATSDR MEDIA ANNOUNCEMENT

ATSDR completes field activities for landfill hydrogen sulfide study in Warren, Ohio

108 community members assist researchers

For Immediate Release: August 3, 2004

ATLANTA - After "outstanding participation" from community members, the Agency for Toxic Substances and Disease Registry (ATSDR) completed more than a month of field activities in Warren, Ohio, as part of a hydrogen sulfide health investigation near the Warren Recycling Landfill.

Agency scientists launched the investigation June 10. The field activities were ATSDR's first step in attempting to determine if a correlation exists between hydrogen sulfide emissions from the landfill and health problems reported by people living or working nearby.

One hundred eight community members participated in ATSDR's study. "The community did an excellent job in doing what we asked of them," said ATSDR epidemiologist Preethi Rao. "For such a long-term project, we received outstanding participation."

ATSDR earlier identified the landfill as a source of hydrogen sulfide emissions. Some community members living or working near the landfill told ATSDR they experienced breathing difficulties, eye irritation, headache and fatigue.

After ATSDR issued a public health consultation classifying the Warren Recycling Landfill an "Urgent Public Health Hazard," the Ohio Department of Health asked ATSDR to conduct the health study.

Each day, some study participants wore a badge measuring the amount of hydrogen sulfide in the air around them. Some also used a breathing monitor twice daily. All participants noted in daily diaries information about their health and whether they had smelled unpleasant odors.

Five participants also allowed ATSDR to install monitors that measured hydrogen sulfide outside their homes.

Working from office space donated by Warren Township, two ATSDR scientists spent five weeks assisting study participants and monitoring hydrogen sulfide emissions.

Next, ATSDR researchers will analyze data collected during their field work. They will return to Warren in November 2004 to announce the study's results and recommendations.

At very high levels, hydrogen sulfide is a broad-spectrum poison, meaning it can poison several different systems in the body. Breathing very high levels of hydrogen sulfide can cause loss of consciousness or death within just a few breaths.

Scientists know much less about the health effects of long-term, periodic exposures to lower hydrogen sulfide levels such as those found in Warren. These exposures may result in shortness of breath, eye irritation, fatigue, loss of appetite, headaches, irritability, poor memory and dizziness.

For more information about ATSDR's hydrogen sulfide health study in Warren, community members can contact Environmental Health Scientist Lynn Wilder or Epidemiologist Preethi Rao, toll-free, at 1-888-422-8737. Regional Representative Michelle Colledge also may be contacted at 312-886-1462. Callers should refer to the Warren landfill site in Warren, Ohio.

ATSDR, a federal public health agency of the U.S. Department of Health and Human Services, evaluates the human health effects of exposure to hazardous substances.

Established by Congress in 1980 under the Superfund law, ATSDR conducts public health assessments at each of the sites on the EPA National Priorities List, as well as other sites when petitioned. Headquartered in Atlanta, ATSDR is staffed by more than 400 health professionals including epidemiologists, physicians, toxicologists, engineers and public health educators.

###

Members of the news media can request an interview with ATSDR staff by calling Jennifer Sarginson or Jill Smith in the ATSDR Office of Communication at 404-498-0070.

[Back to ATSDR Home page](#)

Updated by R. Searfoss August 4, 2004
For more information, contact ATSDR at:
1-888-422-8737 or e-mail (public inquiries)
404-498-0080 or e-mail (news media)

[ATSDR Home](#) | [Search](#) | [Index](#) | [Glossary](#) | [Contact Us](#)
[About ATSDR](#) | [News Archive](#) | [ToxFAQs](#) | [HazDat](#) | [Public Health Assessments](#)
[Privacy Policy](#) | [External Links Disclaimer](#) | [Accessibility](#)
[US Department of Health and Human Services](#)

EXHIBIT 2

December 2, 2004

Mr. Mark Durno
On-Scene Coordinator
Emergency Response Branch
U.S. Environmental Protection Agency Region 5
25089 Center Ridge Road
Westlake, OH 44145

Subject: Site Assessment Report
Warren Recycling Incorporated Site
Warren, Trumbull County, Ohio
Technical Direction Document No. S05-0408-011
Tetra Tech Contract No. 68-W-00-129

Dear Mr. Durno:

The Tetra Tech EM Inc. (Tetra Tech) Superfund Technical Assessment and Response Team (START) is submitting the enclosed site assessment report for the Warren Recycling Incorporated site in Warren, Ohio. If you have questions or comments regarding the report or require additional copies, please contact me at (440) 234-0886 or Therese Gioia (312) 856-8700.

Sincerely,

Kelly Smith
Tetra Tech START Project Manager

Enclosure

cc: Lorraine Kosik, U.S. EPA START Project Officer
 Therese Gioia, Tetra Tech START Program Manager

**SITE ASSESSMENT REPORT
WARREN RECYCLING INCORPORATED SITE
WARREN, TRUMBULL COUNTY, OHIO**

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region 5 Emergency Response Branch
25089 Center Ridge Road
Westlake, OH 44145

TDD No.:	S05-0408-011
Date Prepared:	December 2, 2004
Contract No.:	68-W-00-129
Prepared by:	Tetra Tech EM Inc.
Tetra Tech START Project Manager:	Kelly Smith
Telephone No.:	(440) 234-0886
U.S. EPA On-Scene Coordinator:	Mark Durno
Telephone No.:	(440) 250-1743

CONTENTS

<u>Section</u>	<u>Page</u>
1.0 INTRODUCTION	1
2.0 SITE BACKGROUND	2
2.1 SITE DESCRIPTION	2
2.2 SITE HISTORY	2
3.0 SITE ASSESSMENT ACTIVITIES	8
4.0 ANALYTICAL AND MONITORING RESULTS	12
4.1 AIR SAMPLE RESULTS	12
4.2 SPM MONITORING RESULTS	13
4.2.1 Location 1, Elm Street Results	13
4.2.2 Location 2, Chowtaw Street Results	16
4.2.3 Location 3, West Market Street Results	16
5.0 POTENTIAL SITE-RELATED THREATS	21
6.0 SUMMARY	23
REFERENCES	24

Appendix

DATA REVIEW MEMORANDUM AND VALIDATED ANALYTICAL RESULTS

FIGURES

<u>Figure</u>	<u>Page</u>
1 SITE LOCATION	3
2 SPM MONITORING LOCATIONS	9
3 HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 1 FROM 09/8/04 TO 09/23/04 BASED ON DIRECT-READ SPM DATA	14
4 HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 1 FROM 09/24/04 TO 10/06/04 BASED ON DIRECT-READ SPM DATA	14
5 HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 1 FROM 09/8/04 TO 09/23/04 BASED ON 60-MINUTE AVERAGE SPM DATA	15
6 HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 1 FROM 09/24/04 TO 10/06/04 BASED ON 60-MINUTE AVERAGE SPM DATA	15
7 HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 2 FROM 09/8/04 TO 09/23/04 BASED ON DIRECT-READ SPM DATA	17

8	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 2 FROM 09/24/04 TO 10/06/042 BASED ON DIRECT-READ SPM DATA	17
9	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 2 FROM 09/8/04 TO 09/23/04 BASED ON 60-MINUTE AVERAGE SPM DATA	18
10	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 2 FROM 09/24/04 TO 10/06/04 BASED ON 60-MINUTE AVERAGE SPM DATA	18
11	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 3 FROM 09/8/04 TO 09/23/04 BASED ON DIRECT-READ SPM DATA	19
12	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 3 FROM 09/24/04 TO 10/06/04 BASED ON DIRECT-READ SPM DATA	19
13	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 3 FROM 09/8/04 TO 09/23/04 BASED ON 60-MINUTE AVERAGE SPM DATA	20
14	HYDROGEN SULFIDE CONCENTRATIONS AT LOCATION 3 FROM 09/24/04 TO 10/06/04 BASED ON 60-MINUTE AVERAGE SPM DATA	20

TABLES

<u>Table</u>		<u>Page</u>
1	EXPOSURE GUIDELINES FOR HYDROGEN SULFIDE IN AMBIENT AIR	10
2	AIR SAMPLE ANALYTICAL RESULTS FOR HYDROGEN SULFIDE	12
3	RESULTS EXCEEDING THE UPPER ACTION LEVEL AT LOCATION 1	13

1.0 INTRODUCTION

The Tetra Tech EM Inc. Superfund Technical Assessment and Response Team (START) prepared this site assessment report in accordance with the requirements of Technical Direction Document (TDD) No. S05-0408-011 issued by the U.S. Environmental Protection Agency (U.S. EPA). The scope of this TDD was to conduct site assessment activities at the Warren Recycling Incorporated (WRI) site in Warren, Trumbull County, Ohio. Specifically, START was tasked to prepare a health and safety plan; document site activities with written logbook notes; conduct air sampling; and provide assistance to the U.S. EPA Emergency Response Team's (ERT) Response, Engineering, and Analytical Contractor (REAC). This report discusses site background information, site assessment activities, analytical and monitoring results, and potential site-related threats and summarizes the findings of the site assessment. References cited in this report are listed at the end of the text. The appendix to this report contains a data review memorandum and validation analytical results for air samples collected at the site.

2.0 SITE BACKGROUND

A brief site description and history are presented below.

2.1 SITE DESCRIPTION

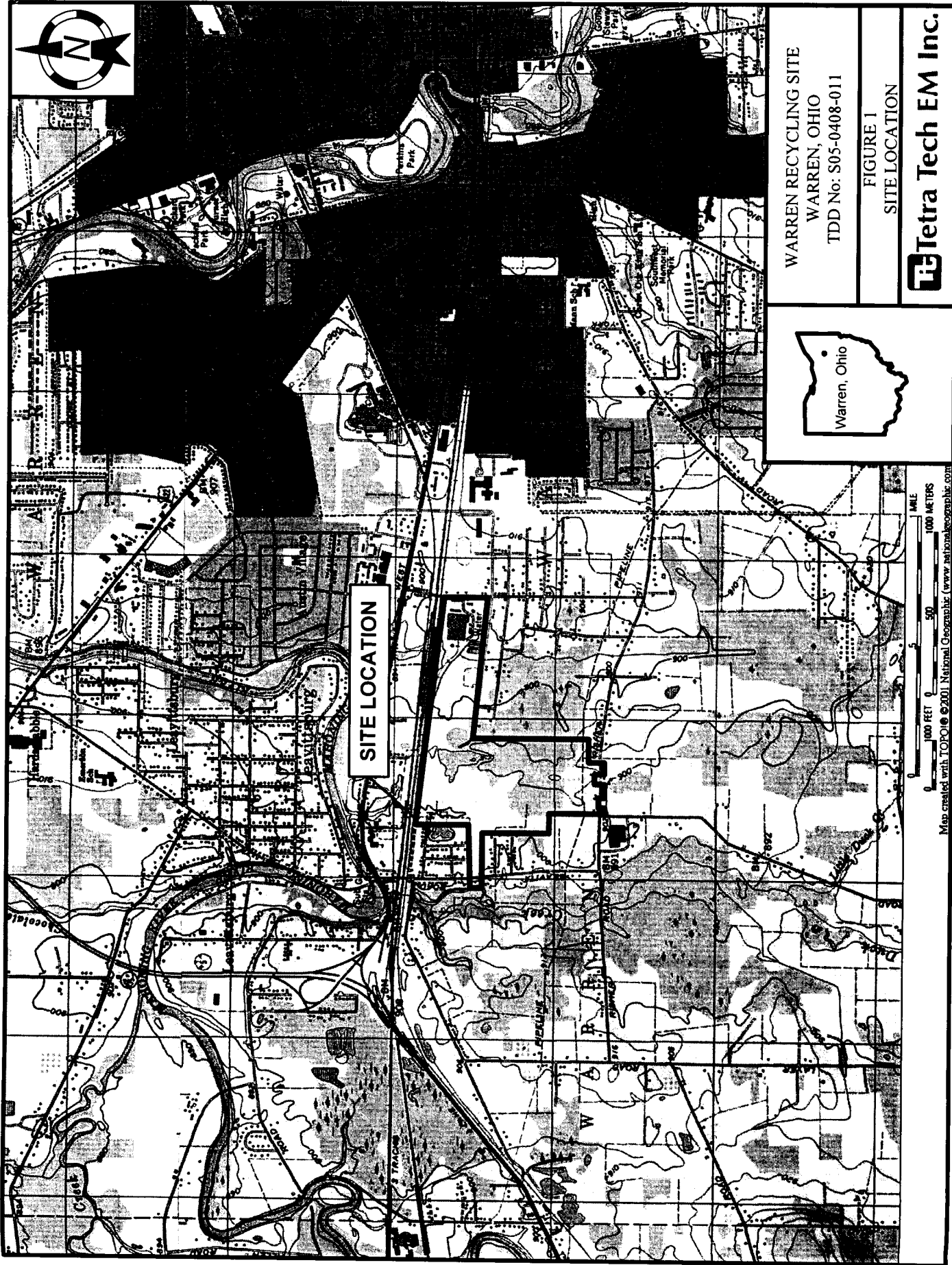
The WRI site is located at 300 Martin Luther King Boulevard in Warren, Trumbull County, Ohio. Figure 1 shows the location of the site. The geographic coordinates of the site are latitude 41°14.102' north and longitude 80°51.600' west. The WRI site is located on approximately 200 acres of land and in a mixed commercial and residential area.

The WRI site is located in close proximity to residential areas and schools. Homes are located within 100 feet of the WRI site, which is not fenced. Labrae High School and Leavitt Elementary School are located within 1 mile of the WRI site; and Bascom Elementary School is located within a few miles.

2.2 SITE HISTORY

WRI has operated a construction and demolition (C&D) landfill at the site since 1994. A separate facility on the site property operates as a transfer station for municipal solid waste collected by the City of Warren. The C&D landfill was constructed in three phases that are described as follows.

- The grandfathered area is the original cell, is unlined, and has no leachate collection system. This area has a clay cap that is approximately 2 feet thick. For landfill closure, the Ohio Environmental Protection Agency (OEPA) has required a 3-foot-thick clay cap that has not been constructed to date.
- Phase I is located west of the grandfathered area and was constructed under 1996 C&D landfill regulations. This area has an in situ liner with a leachate collection system. The area includes the V-area, which is between the grandfathered area and Phase I. Phase I, including the V-area, has a clay cap that is approximately 2 feet thick; however, OEPA has required a 3-foot-thick cap for closure of Phase I.



- Phase II is the active cell located in the west portion of the site property on approximately 15 acres. This cell is lined and has a drainage layer that was constructed using tires. A leachate collection system has been installed.

In 1999, a criminal investigation was conducted at the WRI site to investigate claims of illegal disposal of industrial waste. In fall 2001, OEPA began to receive citizen complaints of odors and a number of health complaints in the areas surrounding the WRI site. OEPA has a telephone hot line that area residents can use to report odors and receives such reports daily.

In May 2001, the Agency for Toxic Substances and Disease Registry (ATSDR) was petitioned to evaluate levels of hydrogen sulfide (H₂S) in the air in the Warren Township communities adjacent to the WRI site. In August 2002, ATSDR personnel visited the community, gathered information, and reviewed ambient air data collected over 28 days at five locations in the area. Based on the May 2002 data, ATSDR issued a health consultation in September 2002 that concluded that exposure to H₂S in air at the levels reported in the data would present a public health hazard. ATSDR recommended additional air testing to validate the original data.

From November 2002 to March 2003, U.S. EPA's ERT conducted indoor and outdoor air monitoring for H₂S at seven residential locations. H₂S was detected at levels up to 6.1 parts per million (ppm) in air outside the houses and 38 parts per billion (ppb) in air inside the houses.

The City of Warren Board of Health (WBH) is responsible for conducting routine inspections at the WRI facility under the authority of OEPA. In November 2003, OEPA informed WBH that the WRI facility was not operating in substantial compliance with Ohio law and that WBH should have denied or proposed denial of WRI's 2003 operating permit.

In June 2003, the WRI site began to exhibit signs of subsurface heating along with excessive H₂S odors and dust. Smoke had been noticed coming from cracks on the landfill, and a "burning" smell was evident in the Phase II area of the landfill. Temperature probes were installed, and numerous attempts were made to excavate and extinguish hot spots.

On July 1, 2003, WRI was ordered to comply with a consent order and permanent injunction by the Trumbull County Court of Common Pleas. The requirements of the consent order are summarized below.

1. WRI is prohibited from disposing of materials other than C&D debris.
2. WRI must unload C&D debris only in designated unloading zones and must remove any prohibited materials before placing debris on working face of the landfill.
3. WRI must submit a quality assurance and quality control waste screening program plan that complies with all laws pertaining to C&D landfills.
4. WRI must submit a final closure plan for the grandfathered area, Phase I, and a portion of Phase II.
5. WRI must implement the final closure plan.
6. WRI must operate in a manner that prevents fires and must take any necessary measures to control or extinguish any fires at the facility.
7. WRI is required to manage and control leachate.
8. WRI is required to complete a hydrogeologic site investigation in order to characterize hydrogeology of the uppermost aquifer system and all geological strata at the site. The results of this investigation must be submitted to OEPA.
9. WRI must implement a groundwater monitoring program that is capable of determining impact of the WRI facility on the uppermost aquifer system.
10. WRI must install an adequate explosive gas monitoring system.
11. WRI must install a gas extraction system and surface monitoring system.
12. WRI must perform postclosure care activities at the WRI facility.
13. WRI must submit cost estimates and financial assurance for closure and postclosure care to OEPA.

On July 3, 2003, OEPA requested assistance from U.S. EPA in conducting a thermal assessment at the WRI site.

On July 18, 2003, a contractor for U.S.EPA conducted a flyover of the WRI site to collect data with an RS-800 infrared line scanner and MR254 FTIR hyperspectral Spectrometer. The data revealed one major hot spot at the southwest corner of the landfill. Several other areas exhibited temperatures above 28°C. Chemical analysis indicated no dangerous chemical compounds were present.

On November 11, 2003, the Ohio Department of Health (ODH) sampled 14 private water systems because of concerns about groundwater in the vicinity of the WRI site. The U.S. EPA secondary maximum contaminant level (MCL) for total dissolved solids of 500 milligrams per liter (mg/L) was

exceeded in 12 samples; the secondary MCL for sulfate of 250 mg/L was exceeded in 4 samples; the secondary MCL for manganese of 0.05 mg/L was exceeded in 1 sample; and the secondary MCL for iron of 0.3 mg/L was exceeded in 5 samples.

On November 21, 2003, ATSDR published the "Health Consultation for Warren Township". The health consultation was based on an exposure investigation (EI) to determine whether H₂S was present in indoor and outdoor air at levels of health concern in the greater Leavittsburg, Ohio, community. ATSDR concluded the following:

- An urgent public health hazard exists based on the following conditions:
 - People with pre-existing cardiopulmonary disease or respiratory problems are present.
 - Levels of H₂S found in landfill vents create the potential for fire or explosion.
 - Physical health hazards exist for those who access the unrestricted landfill.
- H₂S was found in indoor and outdoor air, so the opportunity for the community members to eliminate or reduce exposure does not exist.
- There is a diminished quality of life based on complaints of headaches, nausea, and fatigue caused by H₂S fumes.
- H₂S levels in air near the WRI site may exceed occupational exposure guidelines.

On April 30, 2004, U.S. EPA collected two Tedlar® bag air samples in residential communities near the WRI site. Analytical results for Tedlar® bag 1 showed H₂S at a concentration of 60 ppb; results for Tedlar® bag 2 indicated dimethyl sulfide at 530 ppb, dimethyl disulfide at 18 ppb, methyl mercaptan at 750 ppb, and n-butyl mercaptan at 83 ppb.

WRI installed a pretreatment system to remove H₂S from leachate prior to its discharge to the sanitary sewer. The system consisted of a 1,000-gallon holding tank where leachate was to be treated with hydrogen peroxide over a 10-minute time frame prior to discharge. OEPA observations indicated that the holding time was only approximately 2 minutes. In June 2004, ATSDR and OEPA responded to severe odor complaints in the Leavittsburg community. Using a calibrated, handheld real-time monitoring instrument near the sewer, H₂S was detected at concentrations just below 100 ppm, the level determined

by the National Institute of Occupational Safety and Health (NIOSH) to be immediately dangerous to life and health (IDLH). In July 2004, U.S. EPA informed WRI that it could not pump leachate into the sewer under these conditions. Currently WRI is pumping all facility leachate into tanker trucks and transporting the leachate to the City of Warren Waste Water Treatment Plant.

As of July 1, 2004, WRI is out of compliance with the consent order.

A portion of the land west of Phase II had never been approved and construction of this portion of the landfill had not been completed. Because this portion of the landfill was never completed, leachate began to pool and create a surface exposure threat. In August 2004, WRI completed installation of a drainage layer in this area and covered the area with clay to minimize the surface exposure threat.

In early August 2004, OEPA consulted U.S. EPA's Emergency Response Branch (ERB) to determine whether conditions at the site warranted a removal assessment, emergency response action, or time-critical removal action. After completing a historic data review, U.S. EPA's ERB determined that the site met the criteria for a time-critical removal action. However, ERB also determined that further assessment work would be needed in the nearby residential neighborhood to determine whether hazardous conditions continued to exist because of H₂S releases from the site.

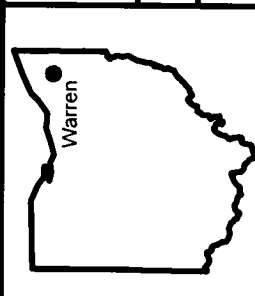
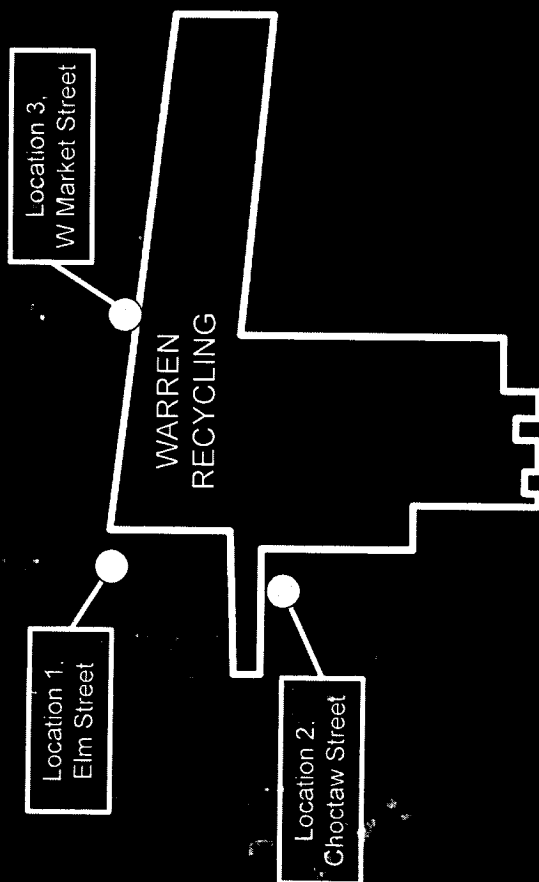
3.0 SITE ASSESSMENT ACTIVITIES

On August 30, 2004, representatives of U.S. EPA and START met with residents who live near the WRI site to assess the extent and frequency of H₂S odors. Three homes were also selected to serve as monitoring locations. These monitoring locations were selected based on historical data, odor complaints, and proximity to the WRI site. U.S. EPA, ERT REAC, ATSDR and START then developed an air monitoring and sampling approach that was consistent with previous studies at the WRI site. The approach consisted of conducting continuous ambient air monitoring by placing H₂S monitors in three historically critical locations surrounding the WRI site. Location 1 was on Elm Street, Location 2 was on Choctaw Street, and Location 3 was on West Market Street. Figure 2 shows these locations. In addition to the H₂S monitors, periodic air sampling in accordance with NIOSH Method 6013 was to be conducted during high odor events in order to supplement monitoring results with quality assurance data.

Prior to monitoring and sampling activities, U.S. EPA requested assistance from ATSDR in developing a site-specific H₂S action level for the site. ATSDR recommended that two action levels be used for the site. The first action level is the American Industrial Hygiene Association's (AIHA) recommended Emergency Planning Guideline (ERPG-1) of 100 ppb. The ERPG-1 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed to H₂S for up to 1 hour without experiencing any health effects other than mild, transient, adverse health effects or without perceiving a clearly defined objectionable odor. The second action level is ATSDR's acute minimum risk level (MRL) of 70 ppb. ATSDR's acute MRL is an estimate of the daily human exposure to H₂S that is likely to be without an appreciable risk of adverse, noncarcinogenic effects over 1 to 14 days of exposure. Additional exposure guidelines for H₂S in ambient air are presented in Table 1.

On September 8, 2004, U.S. EPA, REAC and START mobilized to the WRI site in order to setup 3 H₂S monitors at the three predetermined locations. One Zellweger Analytical Single Point Monitor (SPM) configured to monitor H₂S in air within a range of 50 to 1,400 ppb was installed at each location. The data was stored in the form of a milliamp value on a Logic Beach "Modulogger" in 1-minute intervals. At each location, H₂S data was collected by the SPM for either 27 or 28 days at 1-minute intervals.

On October 6, 2004, U.S. EPA and REAC collected the SPMs and downloaded their data. REAC converted the data from milliamps to ppb then formatted the data into 30-minute and 60-minute rolling intervals.



WARREN RECYCLING SITE
WARREN, OHIO
TDD No.: S05-0408-011

FIGURE 2
SPM MONITORING LOCATIONS

 Tetra Tech EM Inc.

Not to Scale

Source: www.terraserver.com, United States Geological Society, Warren, Ohio, 1994

TABLE 1
EXPOSURE GUIDELINES FOR HYDROGEN SULFIDE IN AMBIENT AIR

Hydrogen Sulfide Concentration (ppb)	Regulatory Guidance and Health Significance
0.11 to 0.33	Average U.S. background levels in air (U.S. EPA 1995)
0.72	U.S. EPA Region 9 PRG: an estimate of daily human exposure to a potential hazard that is likely to be without risk of deleterious effects during a lifetime
1.5	U.S. EPA Region 3 RBC: an estimate of daily human exposure to a potential hazard that is likely to be without risk of deleterious effects during a lifetime
8	Odor threshold: varies by individual (Bottenheim 1980)
30	ATSDR intermediate MRL: an estimate of the daily human exposure that is likely to be without an appreciable risk of adverse, noncarcinogenic effects over 15 to 356 days of exposure
70	ATSDR acute MRL: an estimate of the daily human exposure that is likely to be without an appreciable risk of adverse, noncarcinogenic effects over 1 to 14 days of exposure
100	ERPG-1: the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing any health effects other than mild, transient, adverse health effects or without perceiving a clearly defined objectionable odor
10,000	TLV; NIOSH 10-minute ceiling REL: obvious and unpleasant odor
30,000	ERPG-2: the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms that could impair an individual's ability to take protective action
50,000	NIOSH-recommended worker evacuations: marked irritation of eyes and respiratory track
100,000	IDLH: loss of smell for 3 to 15 minutes

Between September 1 and 27, 2004, START collected six air samples at Location 1 in accordance with NIOSH Method 6013 for H₂S. Samples were collected over 8-hours, 60-minute, 30-minute, or 24-minute time intervals. The 8-hour samples were collected overnight, and the shorter time interval samples were collected during high odor events. A field blank was collected with each sample. All the samples were sent to Data Chem Laboratories, Inc., in Cincinnati, Ohio, for analysis.



4.0 ANALYTICAL AND MONITORING RESULTS

This section discusses the air sample analytical results and air monitoring results obtained during the site assessment.

4.1 AIR SAMPLE RESULTS

START received analytical results from Data Chem Laboratories, Inc., for the air samples collected at Location 1 at WRI site. Air sample analytical results for H₂S ranged from less than 15 ppb to 120 ppb. Results indicated that H₂S concentrations in two of the air samples were above the lower action level of 70 ppb and one of the air samples was above the upper action level of 100 ppb. Table 2 contains sample collection information, analytical results, and averaged SPM readings over the sample collection periods. The appendix contains a data review memorandum and validated analytical results.

TABLE 2							
AIR SAMPLE ANALYTICAL RESULTS FOR HYDROGEN SULFIDE							
Sample ID	Start Time		End Time		Sampling Time	Results	SPM*
	Date	Time	Date	Time	(Minutes)	(ppb)	(ppb)
WRI-L-01	09/11/04	2035	09/12/04	0434	480	52	10.34
WRI-L-02	09/12/04	2100	09/13/04	0459	480	<15	7.66
WRI-L-03	09/13/04	2005	09/14/04	0404	480	15	23.86
WRI-S-01	09/20/04	2344	09/21/04	0043	60	69	140.45
WRI-S-02	09/23/04	2107	09/23/04	2130	24	120	136.38
WRI-S-03	09/24/04	2054	09/24/04	2123	69	93	136.67

Notes:

ppb parts per billion

SPM Single Point Monitor

* Each SPM value is an average of the SPM data collected over the sampling period. The data was compiled by REAC.

Source: Data Chem Laboratories, Inc. in Cincinnati, Ohio.

4.2 SPM MONITORING RESULTS

REAC processed the SPM data for each monitoring location and formatted the data into 60-minute rolling averages. The following sections highlight the monitoring results for each location. Because the WRI upper referenced action level of 100 ppb is based on a 1-hour exposure, only the 60-minute rolling average data is presented in detail below.

4.2.1 Location 1, Elm Street Results

At Location 1, the maximum direct-read concentration detected was 539 ppb, while the maximum 60-minute rolling concentration detected was 154 ppb. During the monitoring event, H₂S concentrations in 459 of the direct read intervals and 223 of the 60-minute rolling average intervals were above the upper action level of 100 ppb. Table 3 summarizes the days when this action level was exceeded at Location 1 based on 60-minute rolling averages. Figures 3 and 4 illustrate the direct-read data at Location 1 for the monitoring event. Figures 5 and 6 illustrate the 60-minute rolling averages at Location 1 for the monitoring event.

TABLE 3			
RESULTS EXCEEDING THE UPPER ACTION LEVEL AT LOCATION 1			
(Based on 60-Minute Rolling Averages)			
Start Time		Intervals above Action Level	H₂S Concentration
Date	Time	(Minutes)	(ppb)
9/13/04	20:08	25	100-117
9/21/04	6:31	68	101-140
9/22/04	7:02	4	100-102
9/23/04	21:54	6	100-100
9/24/04	21:32	19	100-107
9/25/04	4:12	101	101-154

Figure 3
Hydrogen Sulfide Concentrations at Location 1
from 09/08/04 to 09/23/04
Based on Direct-Read SPM Data

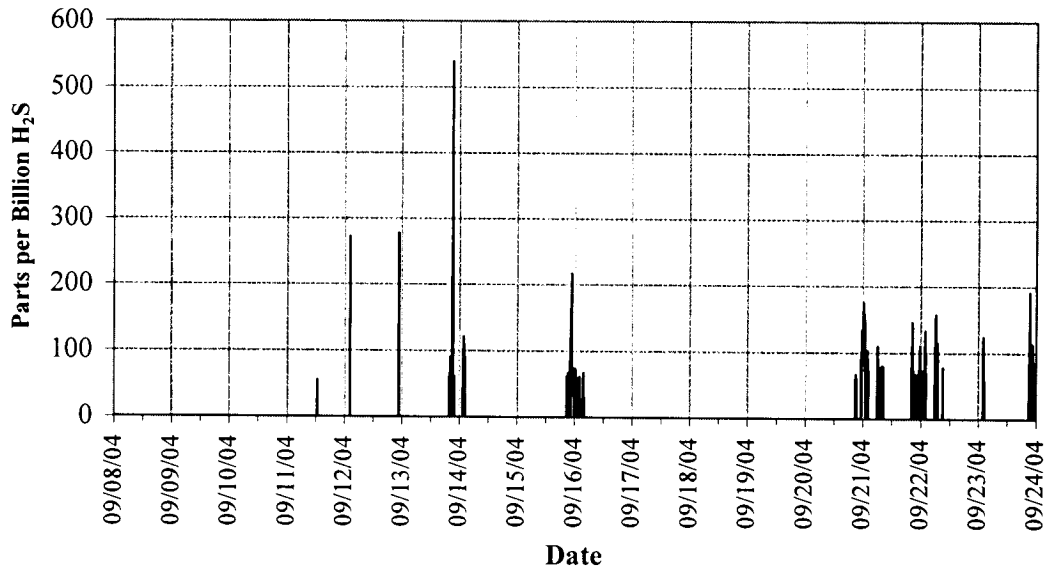


Figure 4
Hydrogen Sulfide Concentrations at Location 1
from 09/24/04 to 10/06/04
Based on Direct-Read SPM Data

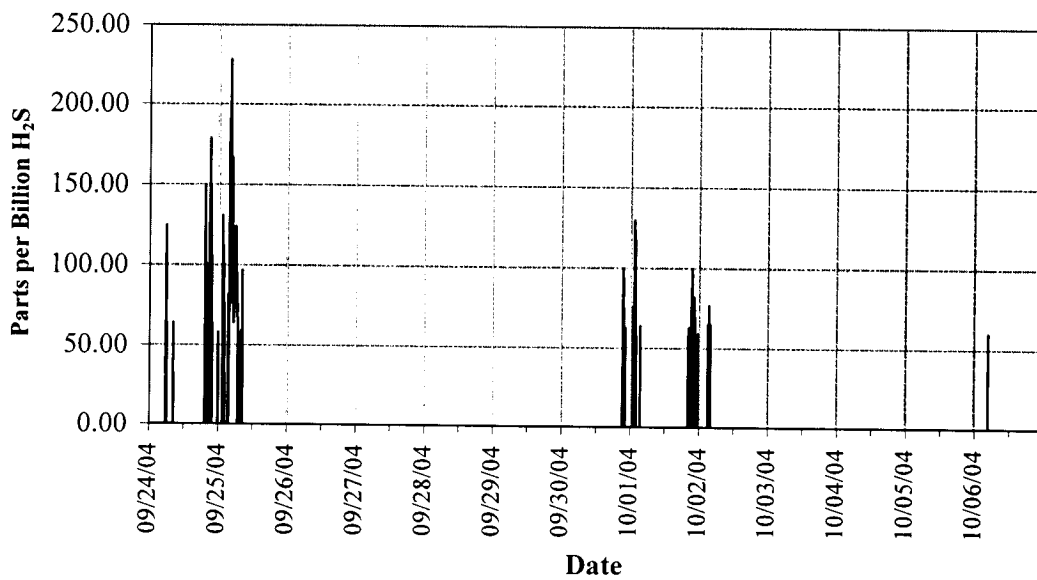


Figure 5
Hydrogen Sulfide Concentrations at Location 1
from 09/08/04 to 09/23/04
Based on 60-Minute Average SPM Data

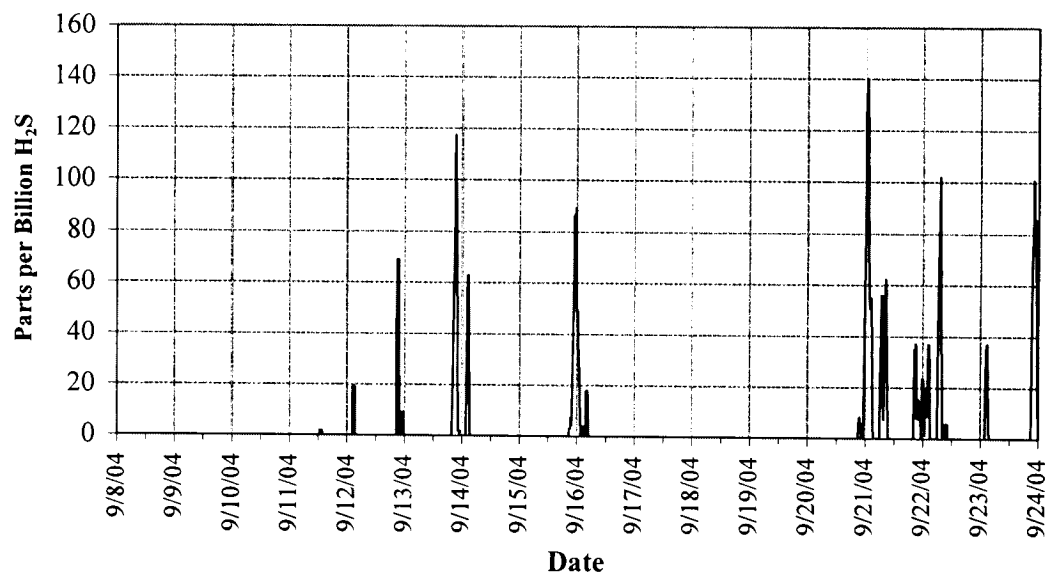
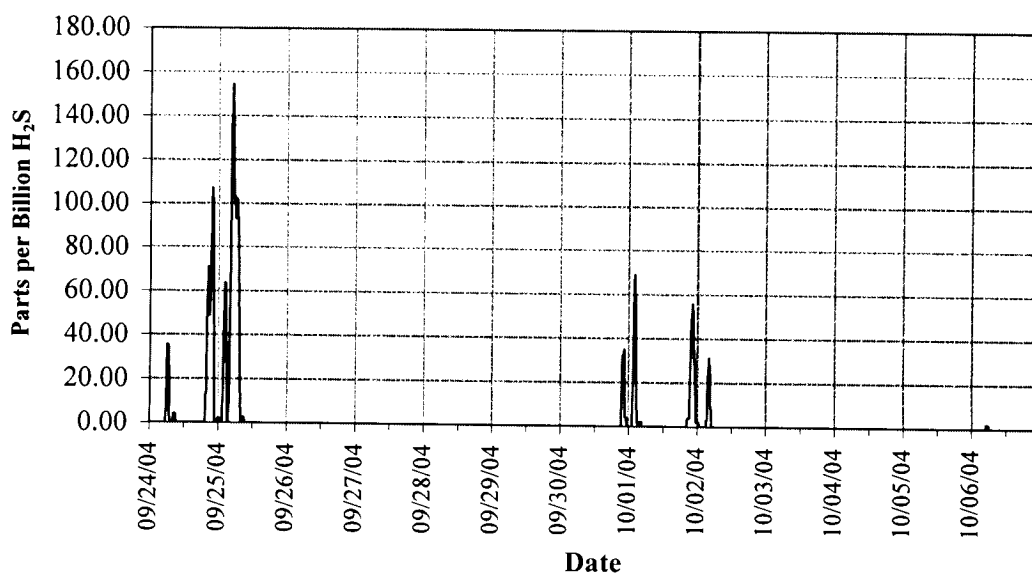


Figure 6
Hydrogen Sulfide Concentrations at Location 1
from 09/24/04 to 10/06/04
Based on 60-Minute Average SPM Data



4.2.2 Location 2, Choctaw Street Results

At Location 2, the maximum direct-read H₂S concentration detected was 145 ppb, while the maximum 60-minute rolling concentration detected was 43 ppb. During the monitoring event, H₂S concentrations in 22 of the direct-read intervals were above the upper action level of 100 ppb. There were no 60-minute rolling average exceedances of this action level during the monitoring event. Figures 7 and 8 illustrate the direct-read data at Location 2 for the monitoring event. Figures 9 and 10 illustrate the 60-minute rolling averages at Location 2 for the monitoring event.

4.2.3 Location 3, West Market Street

At Location 3, the maximum direct-read concentration detected was 109 ppb, while the maximum 60-minute rolling concentration detected was 71 ppb. During the monitoring event, H₂S concentrations in 19 of the direct read intervals were above the upper action level of 100 ppb. There were no 60-minute rolling average exceedances of this action level during the monitoring event. Figures 11 and 12 illustrate the direct-read data at Location 3 for the monitoring event. Figures 13 and 14 illustrate the 60-minute rolling averages at Location 3 for the monitoring event.

Figure 7
Hydrogen Sulfide Concentrations at Location 2
from 09/08/04 to 9/23/04
Based on Direct-Read SPM Data

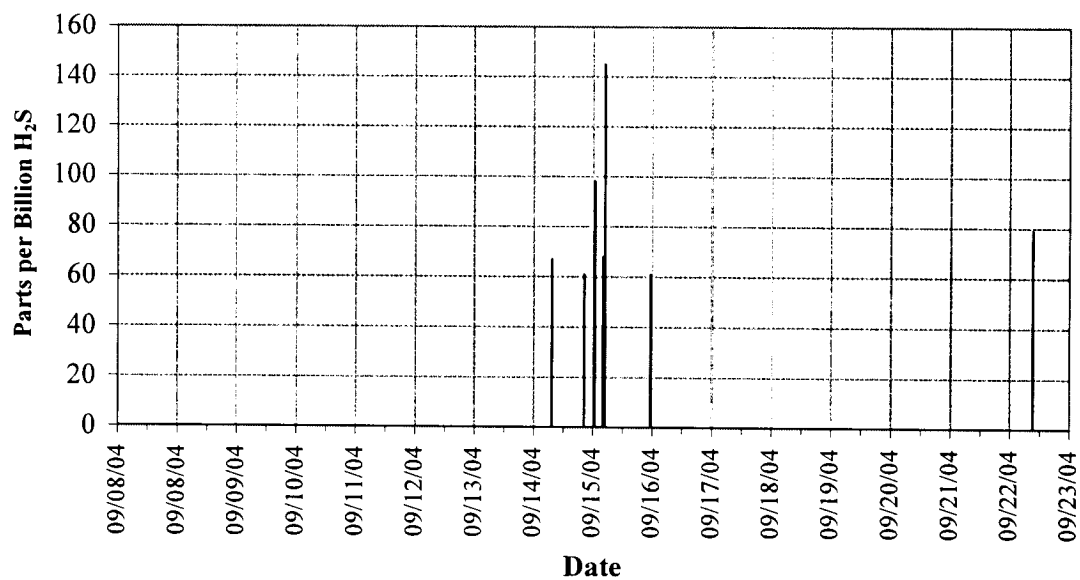


Figure 8
Hydrogen Sulfide Concentrations at Location 2
from 09/24/04 to 10/06/04
Based on Direct-Read SPM Data

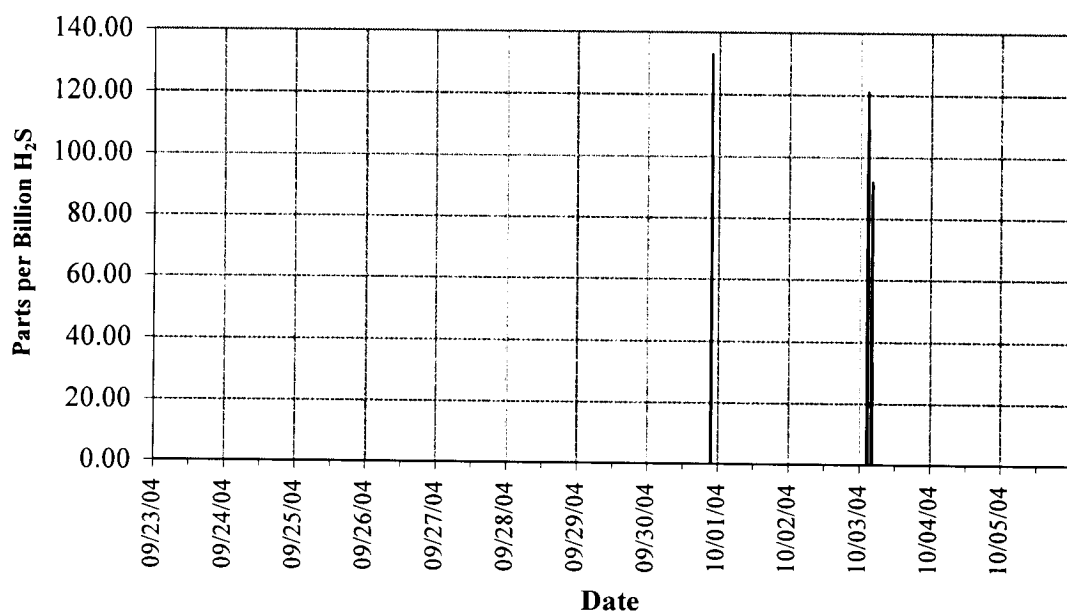


Figure 9
Hydrogen Sulfide Concentrations at Location 2
from 09/8/04 to 9/23/04
Based on 60-Minute Average SPM Data

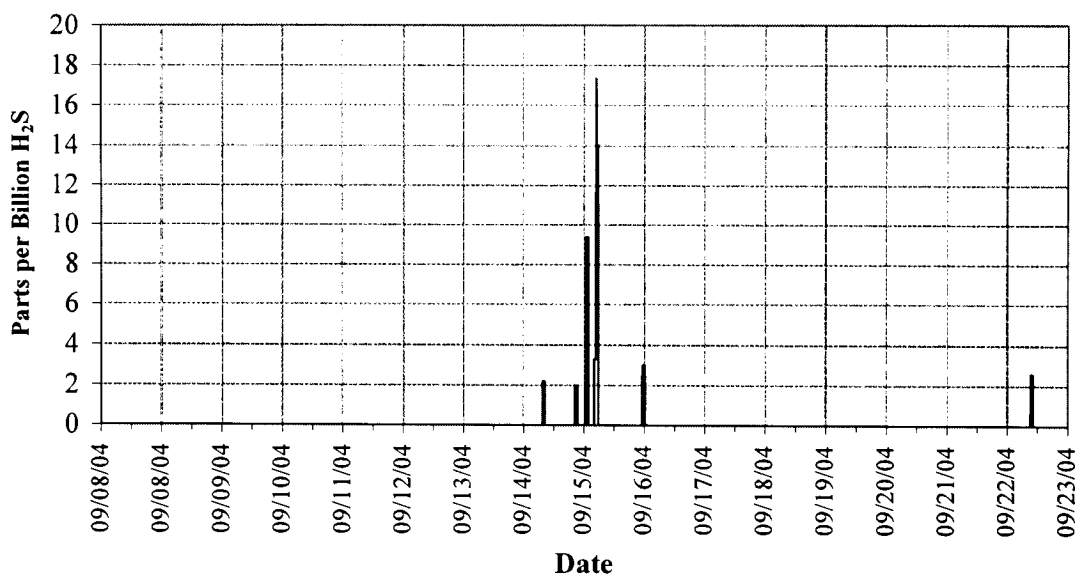


Figure 10
Hydrogen Sulfide Concentrations at Location 2
from 09/24/04 to 10/06/04
Based on 60-Minute Average SPM Data

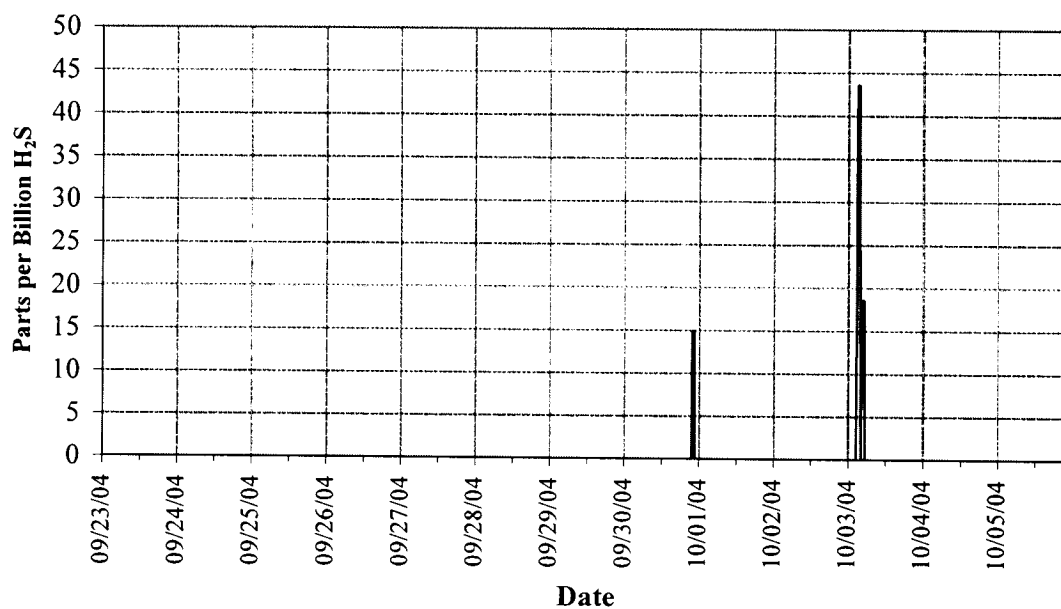


Figure 11
Hydrogen Sulfide Concentrations at Location 3
from 09/8/04 to 9/23/04
Based on Direct-Read SPM Data

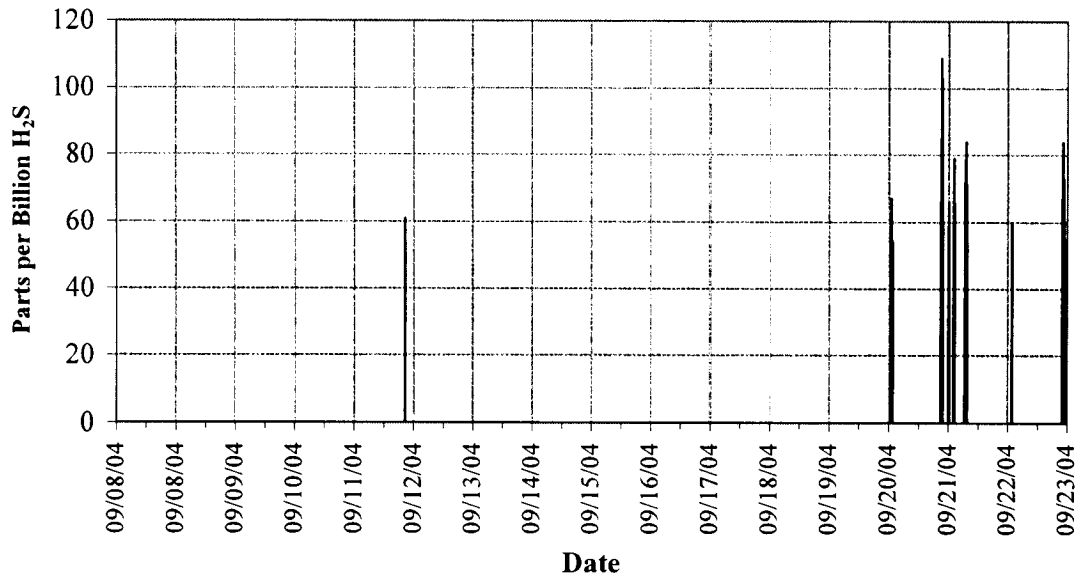


Figure 12
Hydrogen Sulfide Concentrations at Location 3
from 09/24/04 to 10/06/04
Based on Direct-Read SPM Data

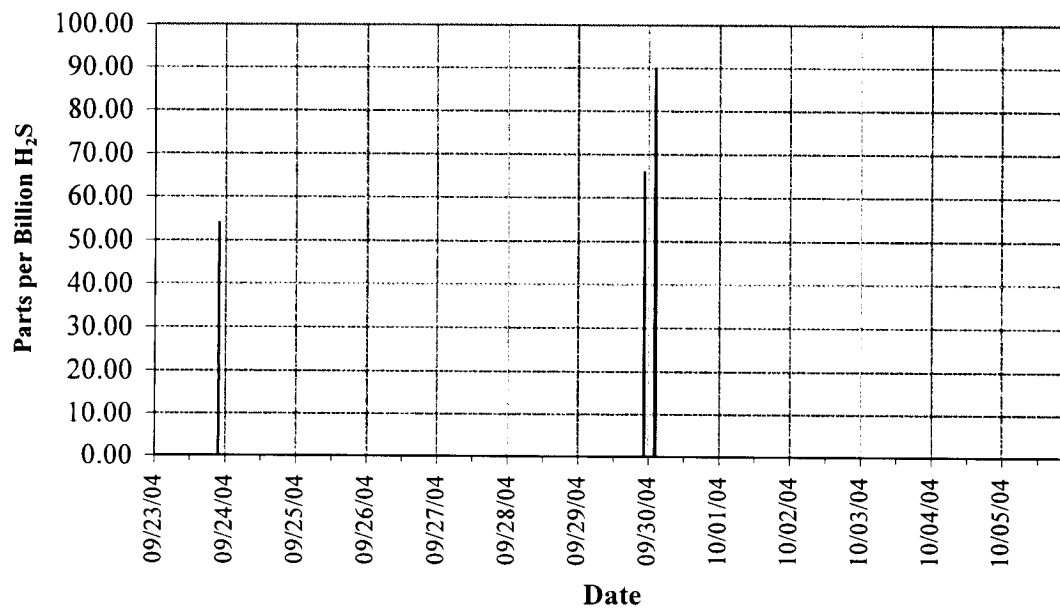


Figure 13
Hydrogen Sulfide Concentrations at Location 3
from 09/8/04 to 9/23/04
Based on 60-Minute Average SPM Data

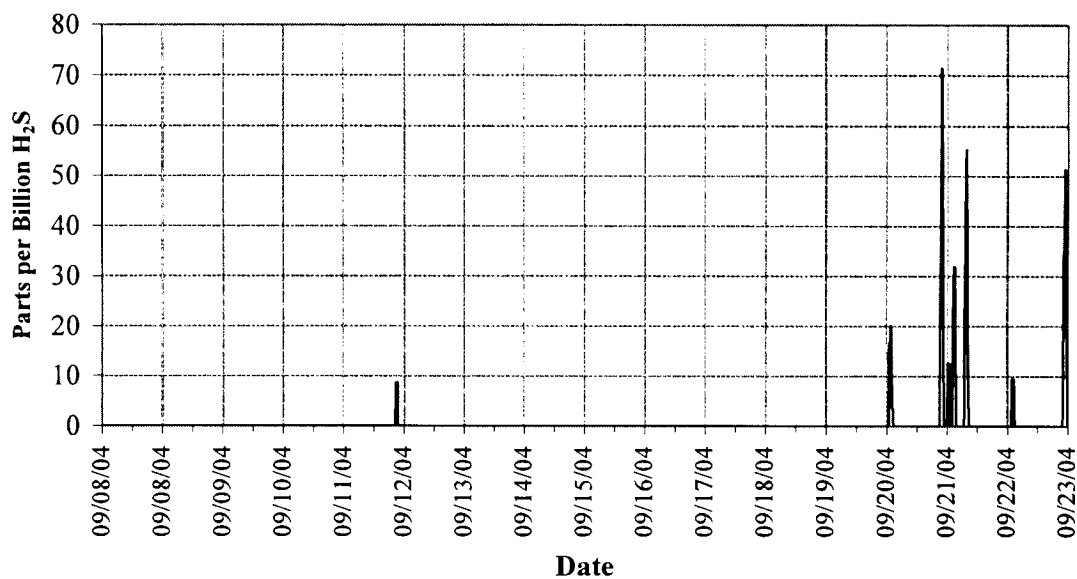
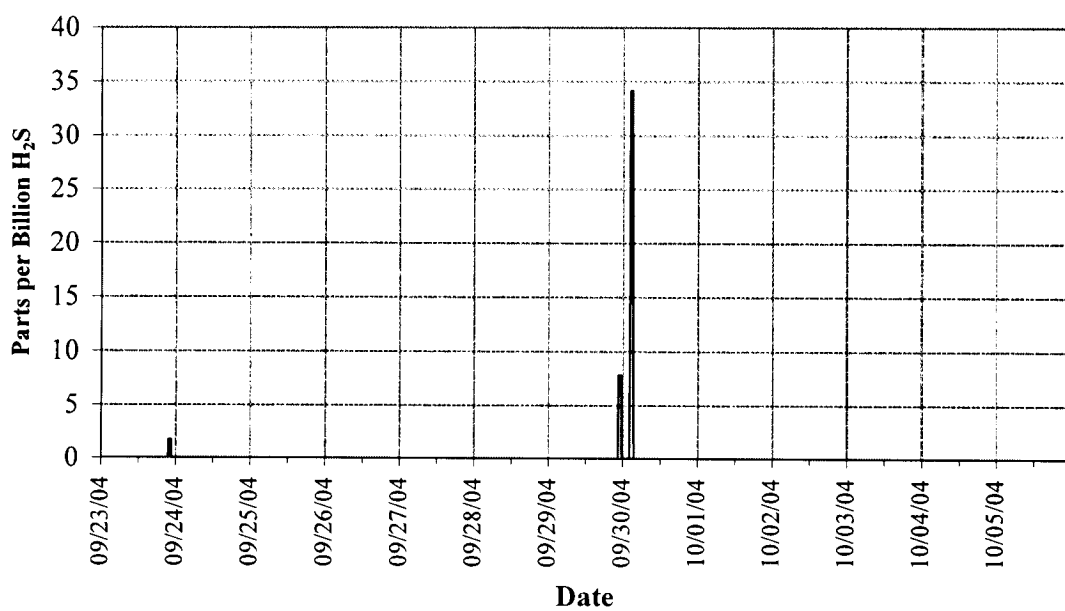


Figure 14
Hydrogen Sulfide Concentrations at Location 3
from 09/24/04 to 10/06/04
Based on 60-Minute Average SPM Data



5.0 POTENTIAL SITE-RELATED THREATS

Based on the National Oil and Hazardous Substances Pollution Contingency Plan in Title 40 of the *Code of Federal Regulations* (CFR), Section 300.415, U.S. EPA may take removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate a release or potential release that poses a threat to the public health or welfare of the United States or the environment. Paragraph (b)(2) of 40 CFR Section 300.415 lists factors to be considered when determining the appropriateness of a removal action. The following discussion summarizes those factors, that are applicable or relevant to the WRI site.

Actual or potential exposure of nearby human populations, animals, or the food chain to hazardous substances or pollutants or contaminants. The WRI site contains a C&D landfill from which H₂S gas is being released. The site is situated in a low-lying area in Warren, Trumbull County, Ohio. U.S. Geological Survey topographic maps indicate that the landfill was constructed in or adjacent to a wooded marsh or swamp. The most likely cause of H₂S generation in the landfill is anaerobic bacterial decomposition of gypsum board (drywall) as a result of moist/wet and compact conditions (Townsend and others 2000). Since 2001, foul odors and adverse health effects have been reported in the neighboring communities. Because of these unpleasant and potentially hazardous conditions, numerous assessments have been conducted at locations surrounding the site property, mostly at residential locations. These assessments culminated in a health consultation for Warren Township, published by ATSDR on November 21, 2003. In the health consultations, ATSDR concluded the following:

- An urgent public health hazard exists based on the following conditions:
 - People with pre-existing cardiopulmonary disease or respiratory problems are present.
 - Levels of H₂S found in landfill vents create the potential for fire or explosion.
 - Physical health hazards exist for those who access the unrestricted landfill.
- H₂S was found in indoor and outdoor air so the opportunity for community members to eliminate or reduce their exposure does not exist.
- There is a diminished quality of life based on complaints of headaches, nausea, and fatigue caused by H₂S fumes.

- Given the concentration of H₂S in the community's air, workers near the site may be exposed to concentrations that exceed occupational exposure guidelines.

H₂S is a hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and 40 CFR. Monitoring and sampling conducted by U.S. EPA in September and October 2004 indicate that continuing exposure is occurring in nearby residential and commercial areas and that H₂S concentrations exceed ATSDR-recommended action levels. During the 2004 site assessment, monitoring data indicated that instantaneous H₂S levels were as high as 539 ppb and that 60-minute averaged concentrations reached as high as 154.49 ppb. Laboratory analytical data for periodic air sampling validated the monitoring data. ATSDR's recommended acute MRL for H₂S is 70 ppb and is based on a 30-minute exposure study. Also, ATSDR has established an intermediate MRL of 30 ppb for H₂S. Additionally, AIHA has established an ERPG-1 for H₂S of 100 ppb as a 60-minute time-weighted average concentration. The ERPG-1 value is a recommended action level that is intended to be protective of all human populations. Current monitoring and sample data demonstrates that H₂S concentrations in air are well above these health-based action levels and verifies that conditions in the site area have not changed significantly since November 2003, when ATSDR's health consultation was published. Therefore, a substantial public health threat is posed by the WRI Site.

Hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate or pose a threat of release. Because of the construction and location of the site landfill, leachate often develops in low-lying areas at the ground surface. Based on OEPA observations and monitoring, leachate at or near the surface of the landfill and surrounding soils is a major cause of H₂S releases to the air and the surrounding communities. Analysis of leachate sample collected by OEPA has revealed high concentrations of sulfur compounds (as sulfide, sulfite, and sulfate) and elevated concentrations of numerous other chemical compounds, many of which are defined as hazardous substances.

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released. H₂S concentrations in air near the site are highest during periods of high air pressure and little to no wind. However, local residents have reported that H₂S odors are present almost every day and during every season of the year. Residents also report that H₂S odors are strongest in the evening and early morning hours. U.S. EPA monitoring and sampling in September and October 2004 confirmed that meteorologic conditions substantially affect the migration of H₂S and other compounds from this site.

6.0 SUMMARY

The WRI site contains a C&D landfill from which H₂S gas is being released. The most likely cause of H₂S generation in the landfill is anaerobic bacterial decomposition of gypsum board (drywall) as a result of moist, wet, and compact conditions. Since 2001, foul odors and adverse health effects have been reported in the neighboring communities. Because of these unpleasant and potentially hazardous conditions, numerous assessments have been conducted at locations surrounding the site property, mostly at residential locations. ATSDR has concluded that an urgent public health hazard exists in the communities surrounding the WRI site.

U.S. EPA directed site assessment activities in residential areas surrounding the WRI site in September and October 2004. Assessment results confirmed the presence of H₂S gas in air in residential communities surrounding the WRI site at concentrations at and above the site-specific action levels of 70 and 100 ppb.

REFERENCES

Bottenheim, J.W., and O.P. Strausz. 1980. "Gas-Phase Chemistry of Clean Air at 55 Degrees N Latitude." *Environmental Science and Technology*. Volume 14, Number 6. Page 709 though 718.

U.S. Environmental Protection Agency. 1995. Integrated Risk Information System. Washington, DC. July 3.

Townsend, T.G., and others. 2000 "Gypsum Drywall Impact on Odor Production at Landfills: Science and Control Strategies." State University of Florida, Florida Center for Solid and Hazardous Waste Management. December (Updated in January 2002.)



APPENDIX

DATE REVIEW MEMORANDUM AND VALIDATED ANALYTICAL RESULTS

(11 Sheets)

EXHIBIT 3

Removal Action Initiated, Warren Recycling Site, Warren, Ohio

On April 25, 2005, U.S. EPA's Region 5 Emergency Response Branch initiated a time-critical removal action at the Warren Recycling Site, Warren, Ohio. This action is in response to high levels of hydrogen sulfide contamination in air being released from a construction and demolition debris landfill and migrating into a nearby residential neighborhood. U.S. EPA's actions are to institute controls to mitigate the cause of hydrogen sulfide generation and also to control existing releases to bring off-site levels down below recommended health-based action levels. The removal action is anticipated to last approximately 100 working days.

Contact: Mark Durno (440-250-1743)

http://www.epa.gov/region5superfund/significant_actions/2005/050603.txt

EXHIBIT 4

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO, EX REL.	:	CASE NO.: 03 CV 1570
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE STUARD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WARREN RECYCLING, INC. et al.,	:	
	:	
Defendants.	:	

**PLAINTIFF STATE OF OHIO'S MOTION TO SHOW CAUSE, WRITTEN CHARGES
IN CONTEMPT, AND REQUEST FOR HEARING**

Pursuant to R.C. 2705.02, 2705.03 and 2705.05, the Plaintiff moves this Court for a Show Cause Order compelling Defendants Warren Recycling, Inc. ("Defendant Warren recycling") and Warren Hills LLC ("Defendant Warren Hills") to show cause why they should not be held in civil contempt and brought before this Court to answer as to why they have not complied with the Consent Order and Permanent Injunction filed with this Court on July 1, 2003 ("Consent Order"). The Plaintiff submits to the court the following charges:

GENERAL ALLEGATIONS

1. The Defendants in this action are Warren Recycling, Inc. and Warren Hills LLC ("Defendants").
2. Defendants are the owners and/or operators of a construction and demolition debris ("C&DD") landfill located at 3000 Martin Luther King Boulevard, Warren Trumbull County, Ohio (hereinafter referred to as "the WRI Facility").

3. On July 1, 2003, Plaintiff State of Ohio initiated this action by filing a Complaint for Permanent Injunctive Relief and Civil Penalties against Defendants for violations of R.C. Chapters 3714 and 3734, and the regulations adopted under each of those chapters, that occurred at the WRI Facility.

4. In addition, on July 1, 2003, this Court journalized a Consent Order, agreed to by Plaintiff and Defendants, which resolved the violations alleged Plaintiff's Complaint.

5. Beginning on or about August 11, 2003, and continuing to the present, Defendants have failed to comply with the terms of the Consent Order.

6. Defendants' failure to comply with the terms of the Consent Order poses a continuous threat to public health and safety and the environment.

FIRST CHARGE IN CONTEMPT

Illegal Acceptance of Solid Waste as to Defendant Warren Recycling

7. The allegations contained in Paragraphs One through Six are incorporated by reference as if fully restated herein.

8. Pursuant to Section IV, Paragraph 8 of the Consent Order, Defendant Warren Recycling, in accordance with Ohio Adm. Code 3745-400-11(F)(2), was ordered and enjoined from disposing of prohibited materials at the WRI Facility.

9. Beginning on or about August 11, 2003, and continuing to the present, Defendant, Warren Recycling disposed of prohibited materials at WRI Facility in violation of Ohio Adm. Code 3745-400-11(F)(2) and Section IV, Paragraph 8 of the Consent Order.

10. Because Defendant Warren Recycling has disposed of prohibited materials at the WRI Facility, the WRI Facility poses a threat to the environment, public health, and welfare of the citizens of Trumbull County, Ohio.

11. Defendant Warren Recycling's conduct, as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Recycling should be found in contempt of court.

SECOND CHARGE IN CONTEMPT

Illegal Acceptance of Solid Waste as to Defendant Warren Hills

12. The allegations contained in Paragraphs One through Eleven are incorporated by reference as if fully restated herein.

13. Pursuant to Section IV, Paragraph 8 of the Consent Order, Defendant Warren Hills, in accordance with Ohio Adm. Code 3745-400-11(F)(2), was ordered and enjoined from disposing of prohibited materials at the WRI Facility.

14. Beginning on or about August 11, 2003, and continuing to the present, Defendant Warren Hills disposed of prohibited materials at the WRI Facility in violation of Ohio Adm. Code Ohio Adm. Code 3745-400-11(F)(2) and Section IV, Paragraph 8 of the Consent Order.

15. Because Defendant Warren Hills has disposed of prohibited materials at the WRI Facility, the WRI Facility poses a threat to the environment, public health and welfare of the citizens of Trumbull County, Ohio.

16. Defendant Warren Hills' conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Hills should be found in contempt of court.

THIRD CHARGE IN CONTEMPT

Failure to Properly Use an Unloading Zone as to Defendant Warren Recycling

17. The allegations contained in Paragraphs One through Sixteen are incorporated by reference as if fully restated herein.

18. Pursuant to Section IV, Paragraph 9 of the Consent Order, Defendant Warren Recycling, in accordance with Ohio Adm. Code 3745-400-11(F)(3), was ordered and enjoined to unload construction and demolition debris only in the designated unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility, unless Defendant Warren Recycling received approval of a pre-acceptance debris screening program.

19. Defendant Warren Recycling has not received approval of a pre-acceptance debris screen program.

20. Beginning on or about August 11, 2003, and continuing to the present, Defendant Warren Recycling failed to unload construction and demolition debris only in the unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility in violation of Ohio Adm. Code Ohio Adm. Code 3745-400-11(F)(3) and Section IV, Paragraph 9 of the Consent Order.

21. Because Defendant Warren Recycling has failed to unload construction and demolition debris only in the unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility, the WRI Facility poses a threat to the environment, public health and welfare of the citizens of Trumbull County, Ohio.

22. Defendant Warren Recycling's conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Recycling should be found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

FOURTH CHARGE IN CONTEMPT

Failure to Properly Use an Unloading Zone as to Defendant Warren Recycling

23. The allegations contained in Paragraphs One through twenty-two are incorporated by reference as if fully restated herein.

24. Pursuant to Section IV, Paragraph 9 of the Consent Order, Defendant Warren Hills, in accordance with Ohio Adm. Code 3745-400-11(F)(3), was ordered and enjoined to unload construction and demolition debris only in the designated unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility, unless Defendant Warren Hills received approval of a pre-acceptance debris screening program.

25. Defendant Warren Hills has not received approval of a pre-acceptance debris screen program.

26. Beginning on or about August 11, 2003, and continuing to the present, Defendant Warren Hills failed to unload construction and demolition debris only in the unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility in violation of Ohio Adm. Code Ohio Adm. Code 3745-400-11(F)(3) and Section IV, Paragraph 9 of the Consent Order.

27. Because Defendant Warren Hills has failed to unload construction and demolition debris only in the unloading zone and to remove prohibited materials including, but not limited to solid waste, before placing debris on the working face of the WRI Facility, the WRI Facility poses a threat to the environment, public health and welfare of the citizens of Trumbull County, Ohio.

28. Defendant Warren Hills' conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Hills should be found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

FIFTH CHARGE IN CONTEMPT

Failure to Properly Use an Unloading Zone as to Defendant Warren Recycling

29. The allegations contained in Paragraphs One through Twenty-eight are incorporated by reference as if fully restated herein.

30. Pursuant to Section V, Paragraph 14(B)-(D) of the Consent Order, Defendant Warren Recycling was ordered and enjoined to operate, maintain, and manage the leachate collection system in accordance with Ohio Adm. Code 3745-400-11(P).

31. Ohio Adm. Code 3745-400-11(P)(1) states that owner and/or operator of a C&DD landfill shall operate the leachate collection system to maintain no more than one foot of head anywhere on the *in situ* and/or added geologic material or constructed liner.

32. Beginning on or about December 5, 2003, and continuing to the present, Defendant Warren Recycling operated the leachate collection system at the WRI Facility so as to

maintain more than one foot of head on the *in situ* and/or added geologic material or constructed liner.

33. Because Defendant Warren Recycling has operated the leachate collection system at the WRI Facility so as to maintain more than one foot of head on the *in situ* and/or added geologic material or constructed liner, the WRI Facility poses a threat to the environment, public health and welfare of the citizens of Trumbull County, Ohio.

34. Defendant Warren Recycling's conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Recycling should be found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

SIXTH CHARGE IN CONTEMPT

Failure to Properly Manage and Control Leachate as to Defendant Warren Hills

35. The allegations contained in Paragraphs One through Thirty-four are incorporated by reference as if fully restated herein.

36. Pursuant to Section V, Paragraph 14(B)-(D) of the Consent Order, Defendant Warren Hills was ordered and enjoined to operate, maintain, and manage the leachate collection system in accordance with Ohio Adm. Code 3745-400-11(P).

37. Ohio Adm. Code 3745-400-11(P)(1) states that owner and/or operator of a C&DD landfill shall operate the leachate collection system to maintain no more than one foot of head anywhere on the *in situ* and/or added geologic material or constructed liner.

38. Beginning on or about December 5, 2003, and continuing to the present, Defendant Warren Hills operated the leachate collection system at the WRI Facility so as to

maintain more than one foot of head on the *in situ* and/or added geologic material or constructed liner.

39. Because Defendant Warren Hills has operated the leachate collection system at the WRI Facility so as to maintain more than one foot of head on the *in situ* and/or added geologic material or constructed liner, the WRI Facility poses a threat to the environment, public health and welfare of the citizens of Trumbull County, Ohio.

40. Defendant Warren Hills' conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Hills should be found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

SEVENTH CHARGE IN CONTEMPT

Failure to submit Post-Closure Care Plan as to Defendant Warren Recycling

41. The allegations contained in Paragraphs One through Forty are incorporated by reference as if fully restated herein.

42. Pursuant to Section V, Paragraph 20(A) of the Consent Order, Defendant Warren Recycling was ordered and enjoined to submit to Ohio EPA a post-closure plan for the WRI Facility by December 28, 2003.

43. Beginning on December 29, 2003, and continuing to the present, Defendant Warren Recycling has failed to submit to Ohio EPA a post-closure care plan for the WRI Facility.

44. Defendant Warren Recycling's conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Recycling should be

found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

EIGHTH CHARGE IN CONTEMPT

Failure to submit Post-Closure Care Plan as to Defendant Warren Hills

45. The allegations contained in Paragraphs One through Forty-four are incorporated by reference as if fully restated herein.

46. Pursuant to Section V, Paragraph 20(A) of the Consent Order, Defendant Warren Hills was ordered and enjoined to submit to Ohio EPA a post-closure plan for the WRI Facility by December 28, 2003.

47. Beginning on December 29, 2003, and continuing to the present, Defendant Warren Hills has failed to submit to Ohio EPA a post-closure care plan for the WRI Facility.

48. Defendant Warren Hills' conduct as set forth in this charge constitutes a continued violation of the Consent Order for which the Defendant Warren Hills should be found in contempt of court and subject to stipulated penalties pursuant to Section VIII, Paragraph 26 of the Consent Order.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff State of Ohio respectfully requests that this Court, upon a finding of civil contempt of court:

A. Pursuant to R.C. 2705.05(A)(1) and this Court's inherent power to coerce complaint conduct, impose a fine in the amount of Two-Hundred and Fifty Dollars (\$250.00) on Defendant Warren Recycling to coerce compliance with the terms and conditions of the Consent Order;

B. Pursuant to R.C. 2705.05(A)(1) and this Court's inherent power to coerce complaint conduct, impose a fine in the amount of Two-Hundred and Fifty Dollars (\$250.00) on Defendant Warren Hills to coerce compliance with the terms and conditions of the Consent Order;

C. Order Defendants to come into full compliance with all terms and conditions of the Consent Order;

D. Order Defendants to provide for and implement additional measures as are necessary to comply with the Consent Order;

E. Order Defendants to cease disposal of prohibited materials at the working face of the WRI Facility;

F. Order Defendants to unload construction and demolition debris only in the designated unloading zone and remove prohibited materials before placing debris on the working face of the WRI Facility;

G. Order Defendants to immediately comply with Ohio Adm. Code 3745-400-11(P)(1) by removing all leachate from the WRI Facility until no more than one foot of head remains on the *in situ* and/or added geologic material or constructed liner;

H. Order Defendants to immediately submit a post-closure plan that complies with Section V, Paragraph 20(B)(1)-(8) of the Consent Order;

I. Order Defendant Warren Recycling to immediately execute and fund a post-closure care financial assurance instrument;

J. Order Defendant Warren Recycling to pay stipulated penalties, in accordance with Section VIII, Paragraph 26, for the violations of the Consent Order alleged in Counts One, Three, Five and Seven;

K. Order Defendant Warren Hills to pay stipulated penalties, in accordance with Section VIII, Paragraph 26, for the violations of the Consent Order alleged in Counts Two, Four, Six and Eight;

L. Order the Defendants to comply completely with all applicable state and local laws, regulations and/or ordinances;

M. Order the Defendants to pay all court costs associated with this case, including witness fees, extraordinary enforcement and litigation costs, and attorney fees for prosecution of this contempt action;

N. Grant such other relief, as this court may deem necessary and appropriate.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL OF OHIO

SHAUN K. PETERSEN (0072444)

Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
spetersen@ag.state.oh.us

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Plaintiff's Motion to Show Cause, Written Charges in Contempt, and Request for Hearing** has been served by certified mail on this 11th day of March, 2004 upon:

Warren Recycling, Inc.
c/o Anthony DiCenso, III
Statutory Agent
2835 Elm Road
Warren, Ohio 44483
Defendant

Warren Hills LLC
300 Martin Luther King Blvd.
Warren, Ohio 44483
Defendant

Additional service via hand delivery and regular U.S. mail on this the 11th day of March, 2004, upon:

Richard T. Sargeant, Esq.
Joseph A. Gregg, Esq.
Eastman & Smith LTD.
One SeaGate, 24th Floor
Toledo, OH 43699-0032
Counsel for Defendant Warren Hills

Steven D. Bell, Esq.
The Simon Law Firm
1300 East Ninth Street
1717 The Penton Media Building
Cleveland, OH 44114-1503
Counsel for Defendant Warren Hills

Shaun K. Petersen
Assistant Attorneys General

EXHIBIT 5

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, EX REL.
JIM PETRO
ATTORNEY GENERAL OF OHIO,

CASE NO.: 03 CV 1570

JUDGE STUARD

Plaintiff,

WARREN RECYCLING, INC. et al.

Defendants.

TRUMBULL COUNTY
CLERK OF COURTS
NOV 16 P 2 06

STIPULATION OF FINDING OF CONTEMPT AND JOINT MOTION TO SUSPEND
ENTRY OF CONTEMPT PENALTIES

The parties hereby stipulate that Defendants Warren Recycling, Inc. and Warren Hills, LLC are in contempt of this Court's Consent Order and Permanent Injunction entered on July 1, 2003, as alleged in Plaintiff's Motion to Show Cause, Written Charges in Contempt, and Request for Hearing filed on March 11, 2004. As a result of the parties' stipulation, the parties hereby move the Court to enter the finding of contempt, cancel the evidentiary hearing scheduled for November 15, 2004, and suspend entry of contempt penalties for thirty (30) days. The parties have been negotiating an agreed to order that would modify the July 1, 2003 Consent Order and Permanent Injunction such that Defendants may purge themselves of their contempt. Those negotiations are nearly finalized. Therefore, the parties request thirty (30) days to complete those negotiations and present an order to the Court for approval.

IT IS SO ORDERED:

John M. Stuard

JUDGE JOHN M. STUARD

VOL 1046 PAGE 050

EXHIBIT 6

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

STATE OF OHIO, EX REL.	:	CASE NO.: 03 CV 1570
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE STUARD
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WARREN RECYCLING, INC. et al.,	:	
	:	
Defendants.	:	

MOTION FOR HEARING TO DETERMINE CONTEMPT PENALTIES

Plaintiff respectfully moves this Court to schedule a hearing to determine appropriate penalties for the Defendants contempt of the Court's Consent Order and Permanent Injunction entered on July 1, 2003 ("Consent Order"). On November 16, 2004, the Court, based upon a stipulation of the parties, found that the Defendants Warren Recycling, Inc. and Warren Hills, LLC are in contempt of the Court's Consent Order, as alleged in Plaintiff's Motion to Show Cause, Written Charges in Contempt, and Request for Hearing filed on March 11, 2004. However, because the parties were attempting to resolve this matter, the Court agreed to suspend entry of any penalties at that time. After a year of attempted negotiations, the parties have been unable to reach agreement. Therefore, Plaintiff requests the Court schedule a hearing to impose appropriate penalties for the Defendants' contempt. A proposed entry is attached for the Court's convenience.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL

SHAUN K. PETERSEN (0072444)
Deputy Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 752-7901
Facsimile: (614) 466-8898
spetersen@ag.state.oh.us
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Plaintiff's Motion for Hearing to Determine Contempt Penalties** has been served by regular U.S. mail on this 20th day of June, 2005 upon:

Steven D. Bell, Esq.
The Simon Law Firm
1300 East Ninth Street
1717 The Penton Media Building
Cleveland, OH 44114-1503
Counsel for Defendants

Shaun K. Petersen

EXHIBIT 7



Riding the Rails

By: William Turley

September 2004

URL: <http://www.cdrecycler.com/articles/article.asp?ID=4727&CatID=8&SubCatID=92/>

Ohio's C&D landfills have become the final resting place of choice for thousands of tons of C&D debris shipped by rail, most of it from the northeast United States. The reason for this is simple, as Ohio's tipping fees can be one-tenth of those along the Atlantic coast. Coupled with the relative affordability of hauling by rail, one can see why in 2003 Ohio had net imports of more than 1.4 million tons of all types of solid waste, a 13.4 percent increase in net imports since 2002.

Included in that total is an average of thousands of tons per day of C&D that has been coming into the state, with much of it arriving in a pulverized, almost powderish form so that more can be fit into each rail car. Indeed, some C&D recyclers in the Northeast have whole business models planned around picking out some of the more recyclable materials from the waste stream and shipping the rest to the Buckeye State.

But such wise business decisions have become controversial in the wake of citizen complaints of hydrogen sulfide gas (H₂S) odors from some of the landfills in Ohio that accept the rail-hauled waste. This has led to increased enforcement of the state's C&D regulations, and the Ohio Environmental Protection Agency (OEPA) is now taking a closer look at its own interpretation of those rules.

PLAYING BY THE RULES Fines Hit Roadblock in NH

"Since 1996 we have had a rule for our construction and demolition facilities that prohibits a C&D facility from bringing in any debris that has been rendered unidentifiable or unrecognizable as construction and demolition debris, as it is defined in Ohio," says Dan Harris, director of the OEPA Division of Solid & Infectious Waste Management, the regulatory body for C&D recycling and disposal in the state.

"This includes shredding, pulverizing, anything that would render the material unidentifiable. We have a

The New Hampshire Department of Environmental Services (DES) may be giving East Coast contractors and haulers another reason to look toward Ohio as a place to ship their debris. The agency has banned the use of fines generated at mixed C&D recycling operations as use for alternative daily cover (ADC) in municipal solid waste (MSW) landfills.

C&D recyclers in the state were informed of the surprise move in a certified letter from the director of DES' Waste Management Div., who issued the letter on July 1 and made the ban effective on July 26. According to the letter, the department banned the "co-disposal of 'gypsum-containing' fines with MSW . . . because the Department believes that there is a link between these fines placed with MSW and the production of high amounts of hydrogen sulfide, mercaptans, and other reduced sulfur compounds."

Observers in the state say the action took place because the state's largest landfill Waste Management's Turnkey operation in Rochester, was experiencing odor problems. Besides using C&D fines as ADC, the facility also takes in other types of waste, such as municipal sludge.

The DES has been asked by the Construction Materials Recycling Association (CMRA), Lisle, Ill., and others for the scientific data upon which it has based its decision. The CMRA, which is currently creating a database on the composition of

few facilities that have been bringing in material that we determined to be unidentifiable and in violation of that rule," he notes.

Harris explains that the reason for the rule is to ensure that Ohio C&D facilities are receiving the kind of waste deemed appropriate for the facility. If the material is pulverized and that ability to recognize it as C&D is gone, "our site inspectors really don't have any way of verifying that the material is appropriate."

C&D fines from recycling operations across the country, is also asking if the DES can make such a unilateral and economically damaging action to the state's C&D recyclers without at least some type of promulgation or public hearing. "We are investigating the mechanism they must follow in issuing such rules," says Turley.

Turley contends there is no proof that the fines were causing an odor problem, though they serve as a convenient scapegoat. "Of course, under the right conditions gypsum can create hydrogen sulfide gas, but you have to make those right conditions," says Turley.

The DES says it will work with CMRA to develop new outlets for the fines, but some are skeptical that enough new markets can be found for the amount being produced. —*C&DR Staff*

The concern is to make sure there are no contaminants in the material. This is key, he adds, because historically C&D was very identifiable: "What we are used to seeing is stuff where you can see the brick, wood, drywall, stone, and different sized materials. If you can't recognize the material as C&D, then you have absolutely no basis to know what else is in there."

This is not always the fault of the Ohio C&D landfill operators. Paul Ruesch, an environmental engineer with U.S. EPA's Region 5, based in Chicago but covering the state of Ohio, has toured many of the Ohio facilities. "The regulators in Ohio can't tell whether the material has municipal solid waste or banned items such as propane cylinders, asbestos, lead-based paint, contaminated soils—you name it, it has been found," he remarks. "They have to hire crews of workers to walk along the face of the landfill and pick out the tires, solid waste, propane canisters, etc. The material is not getting sorted out on the East Coast."

Ruesch's take on the situation is that Ohio has weak regulations for C&D landfills. "The regs were designed for small facilities that accept a couple of hundred tons of material a week. They were not designed to handle facilities taking in thousands of tons per day of pulverized debris shipped in from out of state," he says.

Michael Cyphert, the legal representative for the C&D Association of Ohio, says there are a few landfills, mostly in the eastern portion of the state, that accept rail-hauled C&D. "The majority of C&D landfills in Ohio do not accept waste via rail," he says. "Most of these businesses do not have problems with waste not identifiable as C&D."

The problem stems from how EPA is interpreting and using the C&D definition of the word "recognizable," he says. "My opinion is that Ohio EPA has gone too far, that they have missed what the real reason behind the (1996) rule amendment was, and are now using it as a sword to deal with what they consider to be problem landfills."

One example of the interpretation problem is the C&D fines. "There probably is no difference in the fines of a rail car [full of C&D debris] than fines in the bed of a long-haul truck hauling MSW three miles down the road to the local landfill," Cyphert says.

WORK IN PROGRESS

Gordon Reger is a principal at Regus Industries, which until recently operated the Warren Hills landfill near Warren, Ohio. The site received hundreds of railcars filled with pulverized C&D. With nine Notice of Violations warnings in eight months, according to Ruesch, the facility was often spotlighted for facing the many problems

with Ohio C&D regulations.

Reger says he understands that OEPA was very strictly enforcing the definition of C&D in the regulations, "which they have the right to do." But he adds, "That includes a coffee cup or water bottle from a construction job. Every once in a while it does happen," he says, referring to a beverage container being lobbed into a C&D debris bin at a work site. "When you bring in waste in large volumes, there is no way to sort out 100 percent of the non-conforming waste."

But Warren had other problems as well, according to its critics, including the generation of H₂S gas, which brought in complaints from the landfill's neighbors. H₂S, which smells like rotten eggs, can, in very high doses, be harmful to human health. Harris of OEPA says that the complaints are what originally brought his agency in to investigate the site. "But the hydrogen sulfide issue is not the reason why we are focusing on pulverized waste. Really it is the existing rule, and the issue of how do we assure the citizens of Ohio that [this] is C&D going to these Ohio facilities."

Yet Harris admits that "with the advent of seeing these carloads of pulverized material coming in, that is where we first saw the problem with the hydrogen sulfide gas."

He adds, "We have learned that you have to have very careful control of your leachate management system. We also have understood from various sources that leachate re-circulation can aggravate the hydrogen sulfide situation."

Ruesch goes further, saying that the open ponds of leachate at Warren Hills exacerbated the problems. In Ohio though, open ponds of leachate are not against the law. "When the leachate gets agitated, it releases hydrogen sulfide," Ruesch says.

Some of the odor problems can possibly be traced back to the OEPA's own regulations, says Cyphert. "It is a challenge to take in large amounts of material in a confined area," such as what the regulations require, he says. "In some respects the regulations themselves may, frankly, be to blame by limiting the working space."

He says he has been in environmental law for 31 years and the Warren Hills experience was the first he had heard of H₂S problems in landfills. Nobody knew about the problem before it happened, he says. "It is shortsighted for OEPA to say it is all that operator's fault; that he should have known it would develop. Nobody knew; EPA didn't know. They have 20/20 hindsight," says Cyphert.

LAYING TRACKS

So does the rail hauling of C&D to Ohio have a future?

Cyphert thinks rail hauling will continue to go on in Ohio, although only to a small number of facilities. On the shipping end, it will require the participation of good haulers and transfer stations in Eastern states who are very careful about how they deal with C&D, he says, and who understand Ohio's stance on "recognizable" C&D debris.

"The solution is that if the rail haul operations are going to continue, that this pulverized waste should not be allowed in C&D landfills, it should go to Subtitle D landfills," says the U.S. EPA's Ruesch. "The pulverized material must be disposed of in a manner that is protective of human health and the environment."

Interestingly, landfill owner Reger agrees. "Ohio is one of the last states that has C&D landfills that don't require synthetic liners and post-closure treatment. My guess is that it won't continue like that for very long. That is why we have decided that all the materials should go into an MSW landfill and be done with it," Currently all material that Regus Industries is accepting is going to the Sunny Farms Landfill, an MSW facility the company operates

in the state.

But he thinks that even under this scenario, the practice of shipping material that is generated hundreds of mile away by rail will remain economically feasible. Contractors, haulers, landfill operators and recyclers in both part of the country will maintain a keen interest to see what develops.

The author is associate publisher of C&DR and executive director of the CMRA. He can be contacted at turley@cdrecycling.org.

[Home](#) | [Magazine](#) | [myCD](#) | [Store](#) | [Message Board](#)

[Associations](#) - [Conferences](#) - [Software](#) - [MSDS](#) - [Events](#) - [Research](#) [Polls](#) - [Classifieds](#) - [Training](#) - [Business Cards](#) - [Industry Links](#)

© 1997-2004, GIE Media, Inc. All rights reserved. [Privacy Policy](#) and [Terms of Conditions](#).

Tribune Chronicle

Landfill proposal denied

By RON SELAK JR.
6/30/2004

WARREN - In order to close Warren Hills LLC correctly, it must remain open, an attorney told the city's Health Board Tuesday.

But the plan that would properly close the construction and demolition debris landfill in 48 months has been rejected by the Ohio Attorney General's Office, and no new negotiations have been scheduled, said Steve Bell, the attorney representing Warren Recycling.

The proposal would allow Warren Hills a way to generate enough money to address the provisions of the consent agreement and other issues, including closure and post-closure care of the site and concerns about nonconforming and unidentifiable waste entering the site, according to a letter penned by Gordon Reger, Warren Hills LLC manager.

But to do so, it would have to collect another 2,500 tons of debris daily.

The consent agreement, signed in July 2003, spells out 15 provisions that keep the facility in compliance with federal and state environmental guidelines.

Bell, a signatory to the consent agreement, told the board that an attorney for Jim Petro's office said the proposal was like "trying to put a square peg in a round hole."

It states:

I Warren Hills would agree to reduce the capacity of the site to 4 million tons, which with an increased daily input to 4,000 tons would allow the facility to close in about 48 months. In doing so, Bell said, the life of the landfill would be reduced by about 10 years.

Now, the landfill is limited to accepting only 1,500 tons daily.

I The landfill will deplete the air space of its existing cell, and any additional cells would be designed and built to the more stringent

municipal solid waste landfill guidelines, including the installation of a synthetic liner at the bottom of the cell.

I Warren Hills would fund the estimated cost of the consent order work and other obligations by making monthly payments to a trust fund in Ohio EPA's name. For the first 2 million tons, the facility would contribute 75 percent of the funding and pay the remaining 25 percent over the remaining 2 million tons.

If the estimated cost is \$8 million, \$3 per ton for the first 2 million and \$1 per ton of the second 2 million tons of waste accepted would be placed into the account.

If acceptable to the Ohio EPA, the consent agreement would be altered to include the cell construction and closure and to create the trust fund.

Kurt Princic of the Ohio EPA said the agency doesn't have a formal plan from the landfill, and any discussion was a result of the attorney general's office asking a judge to find the facility in contempt of the consent agreement.

Princic and Mike Settles, Ohio EPA spokesman, said they wished not to discuss any negotiations.

"It's a very delicate situation that is not up for public debate," Settles said.

Bell said he has received a verbal "no" to the proposal from the attorney general's office, but nothing in writing. Also, Bell said the agency did not offer a counter proposal. An official with that office could not be reached for comment.

In recent weeks, the Martin Luther King Boulevard site has suspended all waste collection and laid off 35 employees.

"Right now, the landfill is not in a position to accept any matter, and the landfill is not accepting any material," Bell said, adding that no material means no revenue, and no revenue means the facility is unable to meet its legal and environmental obligations.

Despite basically being closed, the facility will continue to pump leachate from the site and operate two hydrogen sulfide meters and a meteorological tower on top of LaBrae High School, Bell said.

"Those in the community should not want to see it closed like this," Bell said, adding he believes opponents should rather see a legal closure with post closure care.

A hearing on the contempt charge is set for the first week of November and there are still hopes from the Warren Hills camp to continue negotiating.

Debra Roth, leader of Our Lives Count, said Warren Hills knew when officials there signed the consent agreement that it would take money to bring the landfill into shape, and now almost a year later, "They are playing the victim when we're the ones who are getting sick."

Warren Mayor Michael J. O'Brien said he would work to facilitate more meetings between Warren Hills, the Ohio EPA and attorney general's office, while Councilman James "Doc" Pugh, D-6th Ward, said he would be calling a health and welfare committee meeting to discuss City Council's views on which way Warren should proceed with the matter.

In a related matter, Safety-Service Director William "Doug" Franklin said with the landfill not accepting any waste, the city's new roll-off garbage collection program probably will be idled until a new construction and demolition debris landfill can be found to dispose of the material.

EXHIBIT C

DEC PERMIT NUMBER
3-5522-00119/00002

FACILITY/PROGRAM NUMBER(s)

Solid Waste Facility
#60-W-03**PERMIT**
Under the Environmental Conservation Law (ECL)EFFECTIVE DATE
February 7, 2003EXPIRATION DATE
February 7, 2008

TYPE OF PERMIT (Check All Applicable Boxes)

☐ New ☒ Renewal ☐ Modification ☐ Permit to Construct ☐ Permit to Operate☐ Article 15, Title 5:
Protection of Waters☐ Article 17, Titles 7, 8:
SPDES☐ Article 27, Title 9: 6NYCRR 373:
Hazardous Waste Management☐ Article 15, Title 15:
Water Supply☐ Article 19:
Air Pollution Control☐ Article 34:
Coastal Erosion Management☐ Article 15, Title 15:
Water Transport☐ Article 23, Title 27:
Mined Land Reclamation☐ Article 36:
Floodplain Management☐ Article 15, Title 15:
Long Island Wells☐ Article 24:
Freshwater Wetlands☐ Articles 1, 3, 17, 19, 27, 37: 6NYCRR
380: Radiation Control☐ Article 15, Title 27:
Wild, Scenic & Recreational Rivers☐ Article 25:
Tidal Wetlands☐ Other _____☐ 6NYCRR 608:
Water Quality Certification☒ Article 27, Title 7: 6NYCRR 360:
Solid Waste Management

PERMIT ISSUED TO

Metro Enviro Transfer, LLC

TELEPHONE NUMBER

(480) 627-2700

ADDRESS OF PERMITTEE

15880 North Greenway - Hayden Loop - Suite 100, Scottsdale, AZ 85260

CONTACT PERSON FOR PERMITTED WORK

Mr. John DiNapoli, of Allied Waste Inc.

TELEPHONE NUMBER

(914) 271-9111

NAME AND ADDRESS OF PROJECT/FACILITY

Metro Enviro Transfer LLC

LOCATION OF PROJECT/FACILITY

1A Croton Pointe Avenue

COUNTY

Westchester

VILLAGE

Croton-on-Hudson

WATERCOURSE/WETLAND NO.

N/A

NYTM COORDINATES

E: N: 4

DESCRIPTION OF AUTHORIZED ACTIVITY

Continue to operate a recyclables handling and Construction and Demolition (C&D) debris processing facility on a 9.8 acre site in accordance with the plans and reports set forth in Special Condition No. 5 and as otherwise conditioned herein.

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified and any Special Conditions included as part of this permit.

DEPUTY PERMIT ADMINISTRATOR

Michael D. Merriman

ADDRESS

21 South Putt Corners Rd., New Paltz NY 12561

MDM

AUTHORIZED SIGNATURE

Michael D. Merriman

Date

February 7, 2003

Page 1 of 10

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

GENERAL CONDITIONS**General Condition 1: Facility Inspection by the Department**

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

General Condition 2: Relationship of this Permit to Other Department Orders and Determinations

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

General Condition 3: Applications for Permit Renewals or Modifications

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

The permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
- b) 30 days before expiration of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:

NYSDEC Regional Permit Administrator, Region 3
21 South Putt Corners Road, New Paltz, NY, 12561, (845) 256-3054

General Condition 4: Permit Modifications, Suspensions and Revocations by the Department

The Department reserves the right to modify, suspend or revoke this permit in accordance with 6 NYCRR Part 621. The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

REQUIRED SUBMITTALS AND SUBMITTAL PROCEDURES:

1. Unless otherwise specified, all submissions required by this permit shall be submitted as follows:

Two copies:

New York State Department of Environmental Conservation
Region 3 Office
Regional Solid Waste Engineer (RSWE)
21 South Putt Corners Rd.
New Paltz, New York 12561-1696

One copy:

Westchester County Health Department
Solid Waste Engineering Services
145 Huguenot Street, 7th Floor
New Rochelle, New York 10801

One copy:

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials
625 Broadway
Albany, New York 12233-7254

All approvals required by this permit shall be obtained in writing from either the Regional Solid Waste Engineer (RSWE), the Regional Permit Administrator (RPA) of the Region 3 office, or their designee, dependent upon the specific permit condition requiring such approval.

The permittee shall obtain prior approval from the Department for any new construction or any work which will result in a modification of the facility or any component of the facility. Prior approval is not required for the repair or replacement of a facility component provided that such repair or replacement does not result in a modification of the facility or any component of the facility and provided that the department is notified in writing prior to the repair or replacement work being done.

Emergency repairs to facility components which result in a modification as defined above are undertaken at the risk of the permittee unless prior approval is granted by the Department. The permittee shall restore the facility to its previously approved configuration if directed to do so by the Department.

2. The permittee shall promptly submit to the Department, for its review and approval, any supplementary information requested in writing by the Department. Supplementary information shall be submitted to the Department within a reasonable time frame acceptable to the Department.
3. The permittee must submit revised plans and reports at any time that such revisions are necessary to comply with revised 6 NYCRR Part 360 regulations and/or whenever the permittee is notified by the Department that revisions are necessary to comply with applicable 6 NYCRR Part 360 regulations, regardless of whether or not the plans or reports had been previously approved. In most cases, these items are to be updated no less frequently than the renewal of the permit to operate. All reports, plans and manuals must be prepared, stamped and signed by a Professional Engineer licensed to practice engineering in the State of New York.

OPERATION AND MAINTENANCE PLAN AND CONTINGENCY PLAN

4. The permittee shall keep all facility employees familiar with the Contingency Plan and O&M Manual, and have these documents available for ready reference on the site. The permittee shall assure that copies of these documents are



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

provided to the Westchester County Health Department. Additionally, copies of these documents must be available to employees of the facility in a language that they understand if English is not their primary language.

5. The facility shall be operated in conformance with:
- A. The general and specific conditions of this permit,
 - B. Current 6NYCRR Part 360 Solid Waste Management Facilities regulations,

The permittee shall also comply with c, d and e below, to the extent that they do not conflict with a & b above.

- C. The 6NYCRR Part 360 original permit application and revised engineering report prepared by Spectra Engineering dated October 24, 1997, and renewal application dated May 3, 2002 submitted under the signature of Mr. Anthony Pastramo, District manager,
- D. Site plan prepared by Spectra Engineering P.C., dated September 16, 1997 and last revised on October 6, 1997.
- E. Operations and Maintenance Manual as required by NYCRR 360.16.3(h), last updated April 23, 2002.

Any substantial revisions to the above approved documents, or to the operations at this site, require approval from the Department.

RECORD KEEPING AND REPORTING

- 6. All inspection logs, records and monitoring records, along with a copy of this permit, and all maps and documents referenced in 6NYCRR Parts 360-1.14(u)(1) and 1.14(i), shall be maintained by the permittee for a period of seven years, and copies of same shall be kept on premises and available for Department inspection.
- 7. An annual report shall be submitted no later than March 1 of each calendar year this permit is in effect. The annual report must be in accordance with 360-16.4(i)(1). The annual report must include a revised closure cost estimate in accordance with Part 360.
- 8. A daily record for facility monitoring shall be maintained in accordance with 360-16.4(i)(2).
- 9. A daily record of incoming waste shall be kept and available for inspection at all times by Department personnel. Additionally, a record shall be kept of outgoing material, consisting of number of loads, quantity, type and destination of said material(s).
- 10. The permittee must continue to use a tracking form(s) for outgoing materials that is acceptable to the Department. Information contained in this form must include, but not necessarily be limited to, quantity of material, type of material, destination of material, verification at receiving end of quantity of material received, date material leaves facility, date material arrives at receiving facility, and signature of responsible person at receiving facility that verifies accountability of receipt of material. The Department reserves the right to require the facility amend or change its tracking documentation if, in the sole determination of the Department, the current tracking system is not adequately accounting for all the materials leaving the facility.
- 11. **COMPLAINT LOG:** Any complaints received by the permittee or the facility staff about the operation of this facility received from the general public or any employee must be documented in a log book, with a description of action taken to alleviate the concern and the results of the action. This shall include, but is not necessarily limited to, complaints about odors, vectors, dust and any other concerns related to the facility. Documentation must be available for review at the Department's request. The log must contain the date and time of the complaint, nature of the complaint, person (whether Department staff, resident, employees, etc) reporting the complaint, weather conditions at time of complaint, the action taken to alleviate the condition, and the effectiveness of the actions taken. The operation of the facility must be conducted in such a manner that any off-site migration of odors, litter and dust do not



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

cause a nuisance condition, as determined solely by the Department. Any operational changes deemed necessary by the Department to mitigate a problem or to prevent similar future problems must be followed.

NOTIFICATIONS:

12. The permittee shall **immediately** notify the RSWE in writing of any emergency situations such as but not limited to fires, receipt of unauthorized waste, spills, a prolonged halt to operation of the facility, liquid detected in any secondary containment system, or if any structure or component becomes damaged or malfunctions in any way. The notification shall consist of the nature of the emergency, the nature of the emergency action taken and the schedule for completing the emergency actions. These emergency incidents must be further documented in the facility's annual report under Section 5 "Problems".
13. Notice of the commencement of any and all portions of on-site activities, except for activities identified in the OM&M and emergency situations (such as equipment breakdown), must be made in writing to the RSWE **at least 5 business days** in advance of the activity. These activities include, but are not limited to, construction of any building or other structure, paving, cleaning of any leachate tanks, and scheduled repairs, inspections or maintenance other than routine or emergency.
14. The Department must be notified in writing **thirty (30) days** in advance of the permittee procuring a new operator. A completed Record of Compliance form for the new operator shall accompany the written notification. Said operator must abide by all the conditions of this permit.

CONSTRUCTION:

15. Within 30 days of the permit renewal, the permittee shall submit a plan to replace and/or upgrade the leachate collection system to comply with 6NYCRR Part 360 standards. This plan must be designed and certified by a professional engineer licensed to practice engineering in the State of New York. Within 60 days of the Department approval of this plan, the permittee shall complete construction of the upgraded leachate collection system. Within 30 days of completion of construction, the permittee must submit a certification by a professional engineer, licensed to practice in the State of New York, that the construction work has been done to 6NYCRR Part 360 standards and any conditions set forth by the Department, including, but not limited to, any and all sampling results as required.
16. Unless otherwise specified within this permit, at least ninety (90) days prior to the proposed commencement of any new construction, including subsequent phases other than construction relating to emergency repairs, the permittee shall submit to the Department for its review and approval, engineering plans prepared by an individual who is licensed to practice engineering in the State of New York, for such construction which are in compliance with 6 NYCRR Part 360 regulations. Except for emergency repairs, no construction shall commence until written approval is received from the Department.
17. All construction shall be in strict conformance with the provisions of:
 - a) Special Conditions of this permit;
 - b) 6 NYCRR Part 360 regulations and any revisions hereafter promulgated; and
 - c) Engineering plans and reports prepared by a Professional Engineer (PE) licensed to practice in New York State and any revisions to these plans and reports which are approved in writing by the Department.
18. A minimum covering of 4 inches of top soil shall be maintained, along with maintenance of existing vegetative cover on the entire screening berm located along the easterly side of the site along NYS Route 9. Written permission or authorization must be obtained from the NYS Department of Transportation prior to any work being done on the portion of the berm which is not on the permittee's property.



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

OPERATION AND MAINTENANCE:

19. Representatives appearing in an official capacity from the Department shall have access to the facility and all records pertaining to the facility for the purpose of making inspections of the operation or collecting samples any time the site is open and in operation. These records must be kept onsite and the facility must also abide by all requirements as outlined in special condition #6 of this operating permit.
20. On a yearly basis, the facility tipping floor shall be emptied of all material, swept, and inspected by Department personnel to determine the condition of same. This inspection must be documented (including photos) and the results of the inspection submitted to the Department for review. This inspection shall be done at a mutually agreed upon time between the facility and the Department; however, it shall occur in the same month of each preceding year. The Department reserves the right to have the facility clean off the tipping floor any other time of the year for inspection if it is suspected the integrity of the floor might be questionable.

If the Department or the permittee determine that repairs are necessary, the facility shall submit a plan to the Department within 14 calendar days of such determination that will, at a minimum, address the repairs, facility operations, subsoil testing, proposed schedule, etc. This plan must be certified by a PE licensed to practice engineering in New York State.

21. In accordance with 6 NYCRR 360-6, all interstitial spaces, secondary containment systems, cathodic protection systems, overfill protection systems, leachate collection/conveyance systems, and condition of tank(s) must be inspected and recorded on a weekly basis. Inspection reports of these weekly inspections and the quantities of leachate removed (if applicable) as well the final destination for leachate disposal must be maintained at the facility for a minimum of seven years from the date of inspection. Further, the aforementioned information must be available for Department review at the facility.
22. Tonnage Limit: The facility may accept up to a maximum of 1,000 tons per day of Construction and Demolition (C&D) debris and wood waste. In the event the facility is unable to ship out material by rail, and has to revert to truck transport for outgoing material, the facility must revert to a tonnage limit of 700 tons per day maximum. In such event, the tonnage may not increase to 1,000 tons per day until such time as a written request is submitted to and approved by the Department.
23. (A) Unacceptable Wastes. The permittee is prohibited from accepting household hazardous waste, liquid waste, municipal solid waste, sewage sludge or septage, chemical or explosive wastes, or industrial wastes as defined in 6NYCRR Part 360 or Part 371, infectious or medical wastes as defined in Public Health Law 1389-aa and Environmental Conservation Law Article 27 Section 1501, or asbestos waste, unless authorized in writing by the RSWE.
- (B) Acceptable Wastes. The permittee may accept only Construction & Demolition (C&D) debris, recyclables and wood, as each is defined in 6NYCRR Part 360.
- (C) Ultimate disposal of waste. All solid waste passing through the facility must be ultimately treated or disposed of at a facility authorized by the Department, if located in New York State, or by the appropriate government agency or agencies if in other states, territories, or nations. Recognizable concrete, asphalt pavement, brick or rock, processed in separate areas and designated for beneficial use, are not required to be disposed at a Department authorized solid waste management facility.
24. Recyclables recovered from the C&D debris may not be stored onsite for more than sixty (60) days. All material(s) recovered must be stored in a manner approved by the Department.
25. Solid waste and recyclables shall be stored at the facility in such a manner that does not cause or create nuisance, sanitary or environmental problems.



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

26. Unauthorized solid waste received at the facility shall be removed from the facility within 24 hours. The Department must be notified of each incident pursuant to special condition #12 and documented in the annual report and a record of each incident must be available for Department review. Any unauthorized waste accepted at the facility must be managed in accordance with applicable federal or State laws and regulations.
27. The facility shall operate only between 8:00 a.m. to 5:00 p.m. Monday through Saturday. Operation of the facility is prohibited on Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving and Christmas Day.
28. The permittee shall undertake any and all measures required by the Department to control blowing papers and litter, insects, odors, dust, noise, vectors and other potential nuisances, including immediate cessation of all or part of the facility's operation. The permittee shall require that all vehicles delivering wastes to the site be appropriately enclosed or covered, or their contents appropriately secured, so as to prevent dust and blowing litter. The permittee shall deny entry to any vehicle that does not comply with this condition.
29. Processed and unprocessed C&D debris, except for processed or unprocessed uncontaminated concrete, asphalt pavement, brick, soil, or rock, shall be stored indoors with a Department approved leachate collection system, or in covered rail cars. Recyclable material(s) recovered from the incoming material must be stored in a manner approved by the Department.
30. All leachate shall be collected in the holding tank and removed from the facility by a hauler having a valid DEC Waste Transporter Permit pursuant to 6NYCRR Part 364 for disposal at an authorized facility. The collection tank(s) shall be checked at a minimum once daily. The tank's integrity must be checked at least once per week in accordance with 6NYCRR Part 360-6.4(c) and Special Condition #21. Any and all other conditions outlined in 6NYCRR Part 360-6 dealing with liquid storage must also be met. All leachate collection components must be kept free draining and unobstructed at all times. Leachate must be collected from all waste hauling trailers (unloaded and loaded) stored on-site.
31. C&D debris from the facility cannot be used for Alternate Daily Cover (ADC) at landfills unless written approval is first received from the Regional Solid Waste Engineer.
32. The permittee shall regularly observe the condition of roads which provide immediate access to and from the facility, and within the facility, to determine if dirt, mud or litter from the facility or from vehicles using the facility is being deposited thereon, and take whatever action is necessary to keep said roads free of any foreign material(s) deposited on same. The permittee shall take such steps as may be necessary (including, but not limited to, paving of on-site access roads) to prevent such conditions or to correct them promptly if they develop.
33. Access to and use of the facility must be strictly and continuously controlled by gates, fencing and signs.
34. Public access to the facility and/or receipt of waste may occur only when an attendant is on duty.
35. All structures, including buildings, leachate collection systems, groundwater monitoring wells and other appurtenances shall be maintained in proper working order.

RECYCLING:

36. The permittee is prohibited from accepting wastes from customers in a municipality which has either not completed a Comprehensive Recycling Analysis (CRA) or is not included in another municipality's CRA satisfying the requirements of subdivision 360-1.9(f) of this Part; and which has been approved by the Department and for which the municipality has implemented the recyclables recovery program determined to be feasible by the analysis.



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

VECTORS:

37. The Department may require the implementation of additional vector controls in the approved plan if, in the Department's sole discretion, the controls currently in place are not adequate.

ENFORCEMENT:

38. Failure of the permittee to meet all the conditions of this permit is a violation of this permit and may result in an Order to immediately cease the permitted activity at the project site.

CLOSURE

39. Unless this permit is renewed, the permittee shall close the site prior to the expiration date of this permit or prior to the expiration of any renewals of this permit in accordance with the closure requirements in 6NYCRR Part 360-18.4(j) and an approved Closure Plan.
40. Within 45 days of the completion of the closure activities, the permittee shall submit to the RSWE a certification, prepared and stamped by a Professional Engineer licensed to practice engineering in the State of New York, that the facility has been closed in accordance with the Department approved closure plan and 6NYCRR Part 360.
41. The Department may require the permittee to remove the berm along NYS Route 9 upon the closure of the facility. The permittee may be allowed to leave the berm in place provided adequate information is available to determine that the material in the berm will not cause an adverse impact on the health and safety of the public and the environment and provided that the permittee obtains written permission from the NYS Department of Transportation with respect to leaving that portion of the berm which is not on the permittee's property.

FINANCIAL ASSURANCE

42. In accordance with 6NYCRR Part 360-1.12 and Part 373-2.8 of this title, the permittee shall maintain a form of Financial Assurance along with an original signed duplicate Standby Trust Agreement (if applicable) acceptable to the Department, in the amount of \$200,000, for closure and post closure monitoring of this facility. Such Financial Assurance document shall clearly state any expiration date assigned by the financial institution or permittee. Neither the provision of the financial assurance, nor any act of the Department in drawing upon the financial funding, shall relieve the permittee of its obligation to comply with this permit and the requirements to close the facility property. The surety shall be in a form acceptable to the Department. The surety shall be submitted to:

Regional Solid Waste Engineer
Division of Solid and Hazardous Materials
NYS DEC
21 South Putt Corners Road
New Paltz, New York 12561-1696

The amount is based on the estimated cost of closing the facility, along with any post closure monitoring requirements.

The Department reserves the right to adjust the amount of the Financial Assurance to account for changing closure costs and for non-compliance with any conditions of this permit or any requirement of Part 360.

43. Termination. In the event that the financial institution proposes to terminate the Financial Assurance at any time, the permittee shall, no less than thirty days prior to the effective date of such termination, provide a substitute Financial Assurance in the same amount and form, or other form acceptable to the DEC. If an acceptable substitute has not been provided by thirty days prior to the termination date, the DEC may draw upon the Financial Assurance for its amount and hold the amount drawn as a cash collateral guarantee until such time as an acceptable substitute is



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

provided or, if necessary during the time prior to the provision of a substitute Financial Assurance, may expend such sums as may be required in the event of the permittee's default of its obligations regarding compliance with this permit, the Permit to Operate this facility, or its closure.

ENVIRONMENTAL MONITOR:

44. Department employees shall act as Onsite Environmental Monitors (OEM) at the facility, along with any other facility owned or operated by the permittee. The OEM shall be present during all aspects of facility operation and construction at times designated by the Department; provided, however, that it is not the intent of this condition to prevent the permittee from conducting such activities as are otherwise authorized by this permit if the OEM is unable to be present at any particular time.
45. The account to fund the Environmental Monitor(s) as established with the Department shall continue as follows:
- a) The sum of \$20,000 shall be maintained with the Department for funding of environmental compliance activities related to the operation of the facility. This sum is based on annual Environmental Monitor program costs and is subject to quarterly revision. Subsequent quarterly payments shall be made for the duration of this permit to maintain an account balance sufficient to meet the next nine months anticipated expenses. Quarterly payments shall be made for the duration of this permit in accordance with the following provisions.
 - b) Costs to be covered by this fund include:
 - 1. Direct personal service costs and fringe benefits of the Environmental Monitor(s), including the costs of replacement personnel for the person(s) regularly assigned to these positions.
 - 2. Direct non-personal service costs, including without being limited to lease of a vehicle if necessary and its full operating costs, and any appropriate chemical sampling and analysis.
 - 3. Inflation increases and negotiated salary increases.
 - 4. Indirect support or overhead costs at the NYSDEC Federally-approved indirect cost rate.
 - c) Actual costs incurred will be documented by quarterly T&A reports for personal service costs. Copies of actual invoices will not be provided but shall be made available for auditing purposes.
 - d) As noted, the Department may revise the required payment on a quarterly basis to include all OEM related costs to the Department. The quarterly revision may take into account factors such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional OEM and supervision of such OEM by full-time OEM supervisors. Upon written request by the permittee, the Department shall provide permittee with a written explanation of the basis for any modification. The Department may revise the required payment on a yearly basis to include all costs of monitoring to the Department. If such revision is required, the Department will notify respondent of such a revision no later than 60 days before the April 1st deadline.
 - e) Within 30 days of written notice by the Department that a payment is due, Payment shall be forwarded to the NYS Department of Environmental Conservation, and should be sent to:

NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7254
Attn.: Environmental Monitors



SPECIAL CONDITIONS

For Article 27 Title 7; 6NYCRR Part 360 (Solid Waste Management Facility)

Payments are to be in advance of the period in which they will be expended. Checks submitted for payment should have noted upon them the following DEC ID# 3-5522-00119/00002.

f) Upon termination (expiration, surrender, transfer) of this permit and all other activities, duties as stated in paragraph "a" above, and the payment of any outstanding costs, the unexpended balance, including interest, of any payments made to the Department shall be refunded to the permittee.

g) Failure to make the required payments shall be a violation of this permit. The Department reserves all rights to take appropriate action to enforce the above-payment provisions.

h) The OEM shall, when present at the facility, abide by all of the permittee's health and safety and operational requirements and policies; provided, however, that this subparagraph shall not be construed as limiting the OEM's powers as otherwise provided for by law and shall not result in the OEM's being less protected than the OEM would be if he or she were to abide by State and Federal health and safety requirements.

i) The OEM shall receive from the permittee all general safety training which is normally given to new site employees. This training will be a supplement to the mandatory safety training that OEM receive from the Department.

j) The permittee shall furnish to the OEM a current site policy and procedures manual for health and safety issues. Within fifteen (15) days of any revision to the health and safety plan, the permittee shall notify the Department, in writing, of such modification.

k) During the post-closure monitoring period, payments shall be limited to the amount necessary to cover periodic inspections of the facility and environmental sampling conducted by or on behalf of the Department, unless the Department determines that a full-time or part-time OEM is required during all or part of that period to monitor conditions which may be in non-compliance, or which may pose a hazard to the environment, health, or safety.

ADDITIONAL REQUIREMENTS:

46. If required by the Department the permittee or its representatives shall periodically meet with Department staff to discuss the facility's compliance.
47. The provisions of this permit shall not be construed to limit the Department's authority as otherwise established by law or regulation.
48. The Department may require additional conditions to be imposed on the permittee in response to requests by the permittee for special approvals of activities on a temporary or permanent basis.

STATE ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQR), the Department has determined that this permit is a renewal where there will be no material change in permit conditions or the scope of permitted activities and is therefore a Type II Action and not subject to further procedures under this law.

Distribution:

P. John, RSWE
D. Pollock, Environmental Engineer
D. Weiss, Environmental Monitor
R. Phaneuf, NYSDEC Albany, Room 7258
Louise Doyle, Westchester County Department of Health
Richard Herbeck, Village Manager, Village of Croton-on-Hudson
M. Millsbaugh, Sterling Environmental Group, Inc.
John DiNapoli, Allied Waste Inc., Regional Engineer

Mayor, Village of Croton-on-Hudson

EXHIBIT D

BB. Metro Enviro Transfer, LLC Operating & Maintenance Manual
[pp. A310-A334]



Sterling Environmental Engineering, P.C.

METRO ENVIRO TRANSFER, LLC
OPERATION AND
MAINTENANCE MANUAL

Prepared for:

Metro Enviro Transfer, LLC
1A Croton Point Avenue
Croton-on-Hudson, New York 10520

Prepared by:

Sterling Environmental Engineering, P.C.
9 Columbia Circle
Albany, New York 12203

MAY 1995

REVISED: JULY 11, 1995
REVISED: OCTOBER 24, 1997
REVISED: MARCH 30, 1998
REVISED: JUNE 2, 1998
REVISED: APRIL 23, 2002

**METRO ENVIRO TRANSFER, LLC
OPERATION AND MAINTENANCE MANUAL**

Table of Contents

	<u>Page #</u>
1.0 INTRODUCTION	1
1.1 General	1
1.2 Facility Design and Operation	1
1.3 Definitions	3
1.4 Other Permits and Approvals	3
2.0 FACILITY OPERATION AND MAINTENANCE	4
2.1 Facility Inspections	4
2.2 Control Measures	5
2.3 Litter Control	5
2.4 Insect Control	6
2.5 Odor Control	6
2.6 Dust Control	6
2.7 Noise Control	7
2.8 Vibration Control	8
2.9 Vector Control	8
2.10 Stormwater Management	8
2.11 Waste Holding Times	8
2.12 Traffic Control	9
2.13 Lighting	9
2.14 Rail Loading	9
3.0 STAFFING PLAN	10
4.0 PERSONNEL TRAINING PROGRAM	10
4.1 General	10
4.2 Personnel Protection and Safety	11
4.3 Health and Environmental Effects	11
4.4 General Policy Statement	11
4.5 Employee Training Program	12
4.6 Safety Training	13
5.0 WASTE CONTROL PLAN	14
5.1 General	14
5.2 Unauthorized Wastes	15
5.3 Compliance and Documentation	16
5.4 Subcontractors	16

6.0	CONTINGENCY PLAN	17
6.1	General	17
6.2	Spill Control	17
6.3	Equipment Breakdown	18
6.4	Fire and Emergency Services	18
6.5	Site Evacuation	18
6.6	Communication	18
6.7	Odors	19
6.8	Drainage	19
7.0	EMERGENCY RESPONSE CONTACTS	20
8.0	CLOSURE PLAN	20
9.0	BUILDING	21

List of Figures

Figure 1	Processing Pad Layout
Figure 2	Processing Pad Layout with Building
Figure 3	Pre-Engineered Building

List of Plates

Plate 1	Site Plan
---------	-----------

List of Tables

Table 1	Allowable Holding Times
Table 2	General Policy Statement

List of Appendices

Appendix A-1	6 NYCRR Part 360 Permit to Operate
Appendix A-2	NYSDOT Storm Sewer Connection Permit
Appendix A-3	NYSDOT Authorization for Berms
Appendix A-4	Coastal Assessment Form
Appendix A-5	Planning Board Resolution Approved Site Plan
Appendix A-6	Planning Board Resolution SEQRA Findings and Negative Declaration

Appendix A-7	Conrail Authorization
Appendix B	6 NYCRR Part 360 Definition of C&D Debris
Appendix C	Facility Daily Inspection Form
Appendix D	Complaint Action Form
Appendix E	Door Manufacturers Literature
Appendix F	Noise Survey
Appendix G	Vibration Study
Appendix H	Stormwater Runoff Calculations
Appendix I	Stormwater Monitoring Program
Appendix J	Employee Training Form
Appendix K	NYSDEC Training Course Syllabus
Appendix L	Letter of Credit and Cost Estimate

94122/Metro_O&M.doc_rev0402

1.0 INTRODUCTION

1.1 General

Metro Enviro Transfer, LLC (Metro Enviro) operates a construction and demolition (C&D) debris processing and transfer facility (the "Facility") located on Croton Point Avenue in Croton-on-Hudson, New York. The Facility operates in accordance with the 6 NYCRR Part 360 Permit No. 3-5522-119/2-0 issued by the New York State Department of Environmental Conservation (NYSDEC), as well as any conditions set forth by the Village of Croton-on-Hudson (the "Village"). A copy of the NYSDEC Permit to Operate is presented in Appendix A-1.

Effective operation and maintenance of the Facility is imperative in order to demonstrate compliance with prevailing environmental rules and regulations and the operational requirements of the 6 NYCRR Part 360 Permit. The Operation and Maintenance (O&M) Manual provides the specific methods and procedures by which the Facility management and staff carry out assigned duties and delineates the manner in which the Facility is operated on a routine basis. The O&M Manual also establishes procedures to be followed under a range of emergency conditions.

The duties and responsibilities of Facility personnel are defined herein and specific requirements for employee training are also presented.

The procedures established herein are based upon the existing Facility as described in the Engineering Report dated October 24, 1997 and the Special Use Permit issued by the Village on May 5, 1998. The existing Facility, as described in the Engineering Report, consists primarily of a concrete pad and building upon which C&D debris wastes and recyclables will be unloaded, processed, temporarily stored and reloaded onto rail cars for ultimate off-site distribution. This concrete pad was subsequently covered and enclosed with a building. Any water which drains from waste materials onto the concrete pad is collected and managed as leachate.

This O&M Manual is written based upon the existing constructed facility. The procedures outlined herein are applicable to the routine operation of the Facility.

This revised O&M Manual incorporates all issues raised by the Village Board of Trustees, the Citizens Advisory Committee, the Village's consultant Allee, King, Rosen & Fleming, Inc., and the NYSDEC. This O&M Manual is also fully compliant with the requirements of the NYSDEC's 6 NYCRR Part 360 permit, the operational and maintenance requirements of 6 NYCRR Part 360, and the standards of care typical in the industry.

This O&M Manual will be provided to all employees and management and will be maintained as current should operational and maintenance procedures require modification.

1.2 Facility Design and Operation

This revised O&M Manual and program are more comprehensive than the program presented in the NYSDEC permit and application documents. Where the revised O&M Manual is inconsistent with historic documents, the Facility will follow the more restrictive requirements of this revised O&M Manual and its Special Use Permit.

The Facility is permitted as a C&D debris transfer and processing facility. C&D debris is delivered to the Facility from the local market. The materials are weighed in, unloaded, sorted and processed, and reloaded onto rail cars for transportation to off-site disposal facilities. The Facility does not receive nor process municipal garbage or putrescible waste and such material will be treated as unauthorized waste and will be handled accordingly. There shall be no composting on-site.

The Facility is designed to process up to 6,000 tons weekly of wood, brush, and C&D debris for recycling and/or off-site disposal. Incoming material shall be limited to 850 tons per day by the Village Permit, but decreased by 10% if 50% of the total material shipped off-site is not shipped out by rail, such calculation to be made on the date the spur has been in operation for six months, based, in that instance only, upon the cumulative percentage of material shipped in the third through sixth month of the initial six months of rails spur operation. The results of that calculation shall determine whether or not the 10% reduction is effective for the second six months of rail spur operation. Thereafter, the calculation shall be made each six months, based on the cumulative percentage of material shipped in the preceding six months, and shall be determinative until the next calculation. The capacity shall increase to 850 tons per day for the second year of this permit, and 1,000 tons per day for the third year of this permit, provided, however that upon review by the Village Board of the operations of the facility during each year of operation, including the reports and data furnished pursuant to paragraph 41 below, the Village may disallow such increase if, in its reasonable judgement, based upon its review of the actual operations of the facility, the impact to traffic in the vicinity, and a written report to the applicant, the Village Board determines that such increase will have, or is having, a detrimental impact on the community. In no event shall any such increase be allowed if the Village Board determines that the applicant has been in material noncompliance with the overall terms and conditions of its permit pursuant to paragraph 41 below. Notwithstanding anything herein to the contrary, in no event shall the capacity exceed 850 tons per day during the term of the permit (unless modified).

Additional detail regarding the basis of the Facility design is presented in the January 23, 1995 6 NYCRR Part 360 Application for Permit Modification and associated supporting documents including the Revised Engineering Report dated October 24, 1997.

The NYSDEC Permit to Operate provides for the Facility to operate between the hours of 8:00am to 5:00pm Monday through Friday. Saturday operations shall be between the hours of 9:00am to 1:00pm. Vehicles will not be allowed to unload prior to 8:00am or after 5:00pm. No mechanical processing of material shall occur prior to 8:00am and after 5:00pm. Prior to 8:00am, vehicles will be queued inside the front gate between the gate and the scale house. There is sufficient room at the Facility to queue more than 20 trucks with a capacity of 30 cubic yards (cy). At 8:00am when the scale house opens, additional vehicles can be queued between the scale house and processing slab. No vehicles will be queued onto Croton Point Avenue at anytime. Arrangements will be made to queue the vehicles on-site past the scale house if necessary, or they will be turned away. Following receipt of the last truck of the day, the vehicle will be unloaded and the load processed in accordance with the procedures identified in Section 2.0. No processing of materials or receipt of trucks will continue after 5:00pm. The unloading and processing area will then be cleared of debris and the area swept down.

While the Facility is closed for business at 5:00pm each day, certain activities such as office and administrative activities, maintenance of equipment, and sweeping of the unloading and processing area may continue beyond 5:00pm, as appropriate.

Notwithstanding any other permit conditions, the Facility operations on Saturday will be limited with hours of operation from 9:00am until 1:00pm, and a maximum of 300 tons. Saturday operations will

include activities normally undertaken on a weekday, however, no truck unloading and processing on the site will be permitted after 1:00pm on Saturday. Additionally, the loading and removal of rail cars will not occur on Saturdays.

Rail pickup and delivery of empty cars by Conrail in this marketplace is typically between the hours of 8:00am and 7:00pm. However, experience in coordinating freight service with the Metro North and Amtrak commuter services favors off peak hours (between 10:00am and 3:30pm). As such, most expected pickups and deliveries are expected to be mid-day.

The Facility design provides specific handling procedures and methodology and identifies the location of material unloading areas, sorting and processing areas, storage areas, truck loading areas, rail car loading areas and recyclables storage areas. Figure 2 presents the layout of the processing and storage pad with the building erected. The design also identifies locations and describes the operation of the vehicle scales and the rail scale. Plate 1 presents the entire Facility layout. Figure 1 depicts the layout of the processing on storage pad specifically identifying the location of the following:

- Vehicle unloading area;
- Processing area;
- C&D debris storage area;
- Hazardous waste roll-off container area;
- Vehicle queuing area;
- Equipment storage area; and
- Storage areas.

1.3 Definitions

Definitions utilized herein are the same as those presented in 6 NYCRR 360-1.2. The definitions of acceptable wastes for the Facility and unacceptable wastes for the Facility are attached hereto as Appendix B. The Waste Control Plan provided in Section 5.0 of this O&M Manual utilizes these specific defined terms.

1.4 Other Permits and Approvals

The Facility holds all necessary permits and approvals from other governmental agencies with jurisdiction over various aspects of the action. These are summarized as follows:

- STORMWATER DISCHARGES

The New York State Department of Transportation (NYSDOT) owns and maintains a permitted storm sewer which crosses the northern portion of the Facility. Metro Enviro has obtained a permit from the NYSDOT to connect its stormwater system to the existing NYSDOT storm sewer. A copy of the permit is presented in Appendix A-2.

- VISUAL BERMS

Visual berms were constructed at the request of the Village Planning Board to provide visual screening from Route 9 and areas north of the Facility. Portions of the berms were constructed on NYSDOT property. Written permission was obtained from the NYSDOT allowing the berms to remain on NYSDOT land. A copy of the written authorization is presented in Appendix A-3.

- COASTAL ZONE CONSISTENCY

A copy of the Coastal Assessment Form submitted in connection with the 1995 Planning Board Site Plan Review is presented as Appendix A-4.

- SITE PLAN APPROVAL

The Village Planning Board has approved the Facility Site Plan. A copy of the Resolution approving the Site Plan is presented as Appendix A-5.

- SEORA FINDINGS

The Village Planning Board, as Lead Agency; previously found that the Facility presented no potential, significant impact to the environment and issued a Negative Declaration. The NYSDEC reaffirmed the Negative Declaration prior to its issuance of the Permit to Operate. A copy of the Planning Board Resolutions concerning the SEQRA Findings is presented in Appendix A-6.

- CONRAIL

Metro Enviro has obtained authorization from Conrail to install the rail siding and to connect to the existing rail line. A copy of the authorization from Conrail is presented in Appendix A-7.

2.0 FACILITY OPERATION AND MAINTENANCE

2.1 Facility Inspections

SELF INSPECTIONS

Regular inspections of the Facility are critical to verify that the Facility is operating in strict conformance to the NYSDEC Operating Permit, 6 NYCRR Part 360, the local Special Permit, the provisions of this O&M Manual, and the performance standards established by the Village Zoning Code.

The duties of the site foreman include routine daily inspections. A copy of the Facility's Daily Inspection Form is presented as Appendix C. Completed Daily Inspection Forms will be available for public review by appointment.

All complaints shall be thoroughly investigated by the appropriate personnel, including the Site Manager and/or Foreman. The Site Manager will be fully briefed and knowledgeable of all complaints and remedial answers. The Facility's Complaint Action Form is presented as Appendix D. Completed Complaint Forms will be available for inspection by the NYSDEC, Village Officials and the public upon request.

NYSDEC INSPECTIONS

Special Condition 29 of the NYSDEC permit requires that the Facility fund an Environmental Monitor, a NYSDEC employee who will be responsible to perform a minimum of two comprehensive inspections of the Facility each week to specifically verify continued compliance with the NYSDEC Operating Permit, 6 NYCRR Part 360, and the O&M Manual.

4. All training programs must be satisfactorily completed within one month of employee's start date. No employee will work unsupervised in a specific job until that particular facet of their training program is satisfactorily completed.

Employees will be observed at least quarterly, which affords the opportunity to review the employee's knowledge of all segments of the training program.

5. The training and Employee Observation Reports filled out on each employee remain in their personnel file. Training records for each current personnel are maintained throughout their employment, and for three years after their departure. Personnel not performing in conformance with this O&M Manual will be terminated. A copy of the Employee Training Form is presented as Appendix J.

4.6 Safety Training

There are numerous employee-related safety mandates established pursuant to New York State Labor Law and Federal OSHA rules and regulations which extend beyond the scope of this O&M Manual. This section clarifies Metro Enviro's policy specifically regarding health and safety issues regarding the operation of the solid waste management facility.

GENERAL SAFETY RULES

Employees will be required to maintain professional demeanor. Running, jumping, shoving, etc. will not be allowed. Employees will also be trained in the proper procedures for safely operating and moving the following equipment:

SAFETY EQUIPMENT/PRECAUTIONS

Employees will be trained in the proper use of the following safety equipment:

- Gloves
- Safety Shoes
- Eye Protection
- Ear Protection
- Hard Hats
- Safety Vests

EMERGENCY EQUIPMENT

Employees will be trained in the proper use of the following emergency equipment:

- Fire Hose Locations
- Extinguisher Locations
- Fire Hydrants - Street
- Electrical Main Shut Off

EVACUATION ROUTES

Employees will be trained in the evacuation routes to safely exit the site during emergency conditions. Generally, the ingress and egress from the site is by way of the site entrance road to Croton Point Avenue. Emergency vehicles will utilize this same ingress and egress.

CONFINED SPACE

There are no confined spaces at the Facility. The leachate tank, storm sewers, catch basins, etc., generally are not accessible. Employees are specifically instructed not to enter any such confined spaces.

SMOKING POLICY

Smoking is strictly prohibited in the waste unloading, processing, and storage areas at the facility.

5.0 WASTE CONTROL PLAN

5.1 General

The components of the waste control program include the employee training program in conjunction with the use of signs at the entrance of the Facility and Facility Use Agreements, which will clearly indicate those wastes which will not be accepted. Facility Use Agreements are letter form contracts, which Metro Enviro will utilize for commercial customers utilizing the Facility. The agreements set forth the generator's obligation in providing materials to the Facility as well as the generator's responsibility to take back materials which Metro Enviro has determined to be unacceptable. In addition, each load delivered will be visually inspected. Furthermore, all customers will be regularly notified of the types of materials which are accepted at the Facility with each billing statement. Industrial, radioactive, infectious, hazardous waste or material, and asbestos will not be accepted for processing at the Facility. Any material not permitted for handling at this Facility will be rejected and returned to the generator. Metro Enviro trains its employees in the identification of unacceptable and potentially hazardous materials in the event that some hazardous materials do find their way to the unloading area. Facility personnel will be trained to recognize, remove, segregate and report all unauthorized solid waste in accordance with this O&M Manual and applicable rules. Should hazardous waste be encountered at the Facility, it will be treated as outlined in the Contingency Plan section of this O&M Manual.

The goal of the control program is to assure that only authorized waste will be accepted at the Facility. Industrial waste, asbestos, infectious waste, and other unauthorized waste and material will not be accepted for processing at the Facility. All customers and truck drivers will be notified as to the wastes that are acceptable at the Facility to help minimize the arrival of unauthorized waste at the Facility. Additionally, notification will be given that all loads are subject to inspection. All suspicious loads will be inspected and records of all inspections will be kept by the staff.

5.2 Unauthorized Wastes

The Facility is only authorized to receive the wastes and recyclables listed in the Operating Permit presented in Appendix A-1. Unauthorized wastes include the following:

Hazardous and Industrial:

- Solvents;
- Paints;
- Pesticides;
- Herbicides;
- Petroleum products;
- Asbestos;
- Medical waste;
- Oil filters;
- Batteries;
- Gas canisters;
- Acids;
- Caustics;
- Sludge;
- Radioactive wastes;
- Industrial waste;
- Chemical/explosive waste;
- Medical/infectious waste;
- Municipal solid waste;
- Hazardous or toxic waste;
- Garbage as defined in 6 NYCRR 360.1(31);
- Petroleum contaminated materials;
- Radioactive materials;
- Asbestos;
- Liquids;
- Sludges, oils, solvents, spent chemicals, acids;
- Vehicle tires;
- Any other putrescible waste;
- Commercial waste as defined in 6 NYCRR 360.1(30);
- Household recyclables; and
- Cardboard, paper, glass and plastics, except when such material is incidental to or related to a load of construction and demolition debris or other acceptable materials received by the facility.

Non-Hazardous

- Tires;
- Appliances;
- Furniture;
- Carpeting;
- Junk;
- Household waste;
- Garbage;
- Yard waste; and
- Compost.

Each and every load received at the Facility is first inspected on the vehicle by the Site Foreman on duty or a designated operator or laborer with the required training and experience. It is then unloaded and processed to remove recyclables. The material is again inspected on the processing pad by the Site Foreman or designated representative immediately prior to processing. The Facility Manager will be immediately notified in the event that unacceptable, unauthorized wastes are identified by the personnel working the unloading area. If unauthorized wastes are identified, the waste will be properly segregated by the laborer and adequately secured in a watertight roll-off container, stored on plastic, or otherwise secured in an acceptable manner. The location of the storage area is presented on Figure 1. This secured material will be subsequently removed from the Facility as soon as practicable as required by the NYSDEC's Permit to Operate, however, not to exceed 24-hours; however, toxic and hazardous waste shall be removed within 12 hours of discovery. Such removal shall be performed by a waste transporter permitted to handle such material pursuant to 6 NYCRR Part 364 and Part 372. The NYSDEC will be promptly notified of each incident and the incident will also be noted in the Daily Inspection Form and annual report and records for NYSDEC review. All proper authorities will be notified if regulated

medical or hazardous waste is discovered at the Facility. In the event that any unauthorized waste is released from its container into the environment it will be handled as set forth under Section 6.2 below.

5.3 Compliance and Documentation

Compliance with the Operating Permit, especially regarding the receipt and hauling of unauthorized waste, is essential to Metro Enviro's livelihood. Failure to comply will result in revocation of the Operating Permit. As such, Metro Enviro will document each occurrence of receipt of unauthorized waste clearly confirming the nature of the waste, specific action taken, ultimate disposition of the unauthorized waste, and associated records and receipts. These documents will be retained on file for review by the Village of Croton-on-Hudson officials and the NYSDEC environmental monitor.

5.4 Subcontractors

Metro Enviro will utilize and retain on-call qualified licensed/permitted subcontractors to address various operational issues related to the inadvertent delivery of unauthorized waste. Such subcontractors will include the following:

Asbestos Waste:

J.M. Associates
255 Railroad Avenue
Bedford Hills, New York 10507
Contact: John Manfreddie @ 914/241-3795

Vanspear Corporation
P.O. Box 353
Ledgewood, New Jersey
Contact: Markus Morreale @ 973/398-7111

Hazardous and Industrial Waste:

Clean Venture/Cycle Chem
201 South 1st Street
Elizabeth, New Jersey 07206
Contact: Hugo Ramos @ 908/354-0210 ext. 211

Medical/Infectious Waste:

Steri Cycle
910 E. 138th Street
Bronx, New York 10454
860/346-6661

EXHIBIT E

SUPREME COURT STATE OF NEW YORK

COUNTY OF WESTCHESTER

GREENTREE REALTY, LLC and METRO ENVIRO
TRANSFER, LLC,
Petitioner/Plaintiffs,

-against-

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF APPEALS,
and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING
INSPECTOR,

Respondent/Defendants,

INDEX NO. 11872/05

County Courthouse
111 Martin Luther King Blvd.
White Plains, N.Y. 10601
JULY 21, 2005

B E F O R E:
HON. FRANCIS A. NICOLAI,
Justice

MARK RICHMAN, CSR
OFFICIAL COURT REPORTER

right to terminate the use if they find violations?

MR. STEINMETZ: That, judge, there is no case law of which we are aware that squarely stands for the proposition that a municipality may close down a nonconforming use for violations.

We've identified the case law that we've located under what circumstances a nonconforming use --

THE COURT: The Court of Appeals has said they can close them down. The Court of Appeals has not said -- they never dealt with the issue. The Court of Appeals has not said that Greentree's nonconforming use is extinguished.

MR. STEINMETZ: That's precisely right.

THE COURT: The problem that I see, assuming I agree with you that Greentree has a nonconforming use, how can I as a trial court say, based on the fact that we have a Court of Appeals decision which terminated Metro's right to use that